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for the Amended Written Direct Statement of George D. Johnson, and individual d.b.a Geo
Music Group 2016-2020 CRB Webcasting IV

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Before the
UNITED STATES COPYRIGHT ROYALTY BOARD
Library of Congress
Washington, D.C.

In the Matter of)

)
Determination of Royalty Rates)
for Digital Performance in Sound)
Recordings and Ephemeral Recordings)
(Web IV))
_____)

Docket No. 14–CRB–0001–WR
(2016–2020)

**INTRODUCTORY MEMORANDUM TO THE AMENDED TESTIMONY AND
WRITTEN DIRECT STATEMENT OF GEORGE D. JOHNSON, an INDIVIDUAL**

George D. Johnson (“GEO”), *an individual* and digital sound recording (“DSR”) copyright creator, without pay, *pro se* and as a non-attorney, also ‘doing business as’ d.b.a. Geo Music Group (“GMG” formerly “GEO”), respectfully submits this Introductory Memorandum to its Amended Written Direct Statement in this proceeding in accordance with 37 C.F.R. § 351.4 for digital sound recordings (“DSR”). This Memorandum includes GEO’s Amended Written Direct Statement and GEO’s Amended Testimony as his only witnesses. Please consider this entire Amended Written Direct Statement as GEO’s Testimony. GEO has no RESTRICTED version, only this PUBLIC VERSION. GEO respectfully requests the right to correct for any inadvertent spelling, grammar, punctuation, and footnoting errors.

We thank the Judges for their thoughtful consideration of the following rates, values, terms and forward-thinking rate structures for streaming DSRs.

GEO'S ROYALTY RATE PROPOSAL, VALUES AND TERMS

Pursuant to 37 C.F.R. § 351.4(b)(3), GEO proposes the following range of appropriate and reasonable ¹ royalty rates, values and terms for subscription transmissions and for eligible non-subscription transmissions made by a subscription service pursuant to 17 U.S.C. § 114 and the making of ephemeral recordings to facilitate such performances pursuant to 17 U.S.C. § 112(e) for the period between 2016 to 2020 for commercial webcasters be a usage-based royalty computed on the greater-of the following per-performance rates and percentages of revenue:

PROPOSAL 1 - PER-PERFORMANCE RATES PROPOSAL

A. Proposed Royalty Rate for Non-Subscription Rates

	Per-Performance Rate	Percentage of Revenue
2016	\$0.10	70%
2017	\$0.12	68%
2018	\$0.14	66%
2019	\$0.16	64%
2020	\$0.18	62%

B. Proposed Royalty Rate for Subscription Rates

	Per-Performance Rate	Percentage of Revenue
2016	\$0.22	70%
2017	\$0.24	68%
2018	\$0.26	66%
2019	\$0.28	64%
2020	\$0.30	62%

¹ "appropriate and reasonable" for the millions of individual copyright owners' long-standing business model that have an absolute private property "right to exclude" any music licensee like Pandora, Spotify or Google as would any homeowner who has the "right to exclude" any common burglar or car thief who breaks in his home or steals his \$30,000 car from his driveway. The ASCAP and BMI Consent Decrees allows for the theft of the attached DSR. Pandora, Google, and Spotify have only considered what is "appropriate and reasonable" for their self-interests.

PROPOSAL 2- COPYRIGHT CLOUD LOCKER PROPOSAL

A. Proposed Royalty Rate for Non-Subscription Rates with Copyright Cloud Locker

	Copyright Cloud Lock - One Time Fee	Per-Performance Rate	Percentage of Revenue
2016	\$0.50	\$0.01	70%
2017	\$0.55	\$0.02	68%
2018	\$0.60	\$0.03	66%
2019	\$0.65	\$0.04	64%
2020	\$0.70	\$0.05	62%

B. Proposed Royalty Rate for Subscription Rates with Copyright Cloud Locker

	Copyright Cloud Lock - One Time Fee	Per-Performance Rate	Percentage of Revenue
2016	\$0.50	\$0.10	70%
2017	\$0.55	\$0.12	68%
2018	\$0.60	\$0.14	66%
2019	\$0.65	\$0.16	64%
2020	\$0.70	\$0.18	62%

Since rates, terms and values may change, GEO submits no re-write or redline changes to 37 C.F.R. § 380.2 through 380.4 at this time.

The primary question we have to ask, ***“is it reasonable for a customer to pay for a product?”***

Please note the **Per-Performance Rate** and **Copyright Cloud Locker One-Time Fee** Rate are what GEO is proposing. Since it is customary or required to provide a Percentage of Revenue along side a Per-Performance Rate, for “greater of” purposes, GEO has done so but is primarily proposing the **Per-Performance and Copyright Cloud Locker One-Time Fee Rate**.

The streamer’s economic model leaves out one crucial element - **the customer**, and

the bundled copyright cloud locker or 'streaming account' forces payment for all music copyrights up-front, one time like all other products.

I discussed Proposal 2 with Soundexchange outside counsel December 18, 2014 to see if they would consider offering an alternate proposal similar to Proposal 2 and have not heard back from them as of writing this Amended Statement.

PROPOSAL 3 - REAL INFLATION "BEATLES" COPYRIGHT LOCKER PROPOSAL

	Copyright Cloud Lock - One Time Fee	Per-Performance Rate
2016	\$0.50	\$0.01
2017	\$1.00	\$0.02
2018	\$1.50	\$0.03
2019	\$2.00	\$0.04
2020	\$2.50	\$0.05

This Proposal 3 is actually *the one that most reflects the real world value of a song* factoring in past, present and future inflation (also known as "the hidden tax") and *the one GEO prays the Judges will consider the most.*

Since the customer is back to paying for music on a per-product basis, like any other normal transaction, percentage of revenue is no longer an issue — it would be a "pass through".

This last Proposal 3 is called "**The Beatles**" Proposal because in 1964 an 8 song album, like any other album in 1964, sold for \$4.98 or \$5 dollars an album. Using the CPI² to factor in real world inflation, \$4.98 is \$37.94 in 2014 or **\$38 dollars.**

\$38 dollars divided by 8 songs equals \$4.75 per-song, so basically **\$5 dollars per-song**

² http://www.bls.gov/data/inflation_calculator.htm

and \$40 per-album in 2014 value and dollars! Whoever says that songs are too expensive in this rate hearing at \$.00 are nothing more than con-men since they expect American music creators to work literally for \$.00 per-song when a song really costs *\$5 dollars per-song using government low-end inflation calculations* and a real world *1964 benchmark*.

Proposal 3, **“The Beatles”** proposal takes into consideration §115 songwriters and music publishers with the same rate proposed here for §114 copyright owners in a “copyright bundle” discussed by The Copyright Office at several Copyright Roundtables in 2014.

Most importantly, Proposal 3, **“The Beatles”** proposal takes into account real inflation and actually gives consumers and music licensees a deal since 2016 should really start with \$2.50 to be split between the recording artist and record label, not in 2020. We pray the Judges start with this **“Beatles”** proposal and *give it the most weight of the 3 Proposals* we have asked the CRJ’s to respectfully consider. **In 2015, a song is worth \$5 dollars per-song using 1964 sound recording pricing. After 15 years of free streaming, this price may be hard for some to understand, but it’s just and long overdue.**

2 CENT BENCHMARK IN 1909

As far as GEO can tell *there is no prohibition in a §114 rate proceeding against using a §115 rate as benchmark* and from my understanding this includes pre and post-CRT, CARP, and CRB proceedings. §114(i) prohibits §115 rates from being lowered based on §114 rate proceedings but GEO can’t find anything prohibiting GEO from using the current 9.1 cents mechanical or the 1909 mechanical of 2 cents as a benchmark in this DSR proceeding.

2 cents or 9.1 cents are not “free market” or “effective competitive market” rates since 2 cents and 9.1 are compulsory, statutory rates price-fixed rates and centrally planned by the

federal government since 1909. However, they still are benchmarks and have been for over 100 years even though 2 cents and 9.1 cents have not been adjusted for real world inflation and are “below market rates” here in 2015. As further explained later in this Statement and using the same inflation calculator above, 2 cents in 1909 adjusted for inflation using the government CPI is now 48 to 52 cents in 2014, rounded to 50 cents for simplicity. See Chart 3 in Exhibits 3.

Therefore, *GEO proposes a 50 cent benchmark per DSR stream, one-time, up-front paid by the customer* in a copyright bundled streaming account based upon the 1909 Copyright Act ‘minimum statutory rate’ for a §115 mechanical of \$.02 cents. Since *a stream is a mechanical and performance at the same time*, as evidenced by so called on-demand streams, then the CPI adjusted rate of \$.50 per copyright should absolutely apply since it’s long over due.

Despite being a §114 hearing, as a songwriter and music publisher I have to say that if the CRJs can find a way to adjust for an *immediate cost of living increase on §115 mechanical rates for a download and CD to \$.50 as well as the §115 part of the stream*, it would be extremely helpful to the survival of the American music creator. Chart 3 on Inflation proves this point.

BACKGROUND

George Johnson, an individual d.b.a as GEO Music Group is an independent record label that specializes in the production of analog and digital sound recordings for terrestrial radio broadcast, internet radio, digital streaming services, retail sale, video synchronization for film, television, and advertising, and other music licensees. George Johnson has operated on historic Music Row in Nashville Tennessee for the past 17 years and owns copyrighted master digital sound recordings with performances by legendary artists such as The Jordanares and The Memphis Horns. GEO looks to expand it’s longstanding business model based on the

constitutional protections afforded to each and every individual American creator by the “Copyright Clause”, Article 1, Section 8, Clause 8 of the United States Constitution.^{3 4}

GEO also looks to it expand its business model on all new digital music platforms using new reforms announced by the Copyright Office as well as a few of the good long-standing protections of the 1909 and 1976 Copyright Acts (including Section 106) passed by two Congresses spanning the past 100 years.

GEO has been adversely affected by the price-fixing of music royalty rates, including composition copyrights and digital sound recordings, as well as the advent of digital streaming services such as Google, YouTube, Pandora, Spotify. Plus, an array of other digital streaming services and various government agencies obsession with these so-called “business models”.

United States Copyright Law, responsible public policy and the longstanding business models of music publishers, songwriters, recording artists, investors and DSR creators have taken a backseat to the financial success of a handful of new start-up streaming companies who claim they are more important and better than the music creators who make their ridiculous salaries and lifestyles possible.

Tragically, Streamers and music licensees in this proceeding are calling for the current statutory licensing system to remain in place, as is, without any rate changes, except to lower the rate from \$.00 to less than \$.00.

³ http://avalon.law.yale.edu/18th_century/fed43.asp "The utility of this power (copyright) *will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals.* The States cannot separately make effectual provisions for either of the cases, and most of them have anticipated the decision of this point, by laws passed at the instance of Congress." — James Madison, Federalist 43

⁴ <http://www.justice.gov/atr/cases/ascapbmi/comments/307869.pdf> Page 3, George Johnson DOJ Comments on ASCAP and BMI Consent Decrees. August 5, 2014

SUMMARY OF WRITTEN DIRECT CASE

The Consumer is going to have to start paying for individual songs again in a copyright "cloud locker"⁵ or "streaming account" that pays in dollars not nano-pennies. That is my case. It's what copyright law demands and it's also extremely self-evident.

The past 15 years of price-fixing and central planning all music copyrights at millionths of a penny for all digital streaming, webcasting or internet radio broadcasters has literally made it impossible for DSR investors, creators, artists, and performers to *record new music*, much less *survive*, or dare I say *profit*.

No music copyright creator should ever be paid anything less than a penny ever again.⁶

After all, copyright is a *constitutional right* and *private property* and music licensees don't own any music copyrights.

Consumers must once again be forced to *pay on a per-song basis, up-front, one-time*, per-streaming company, just like buying a CD, download or records - then stream it all they want. If streamers continue to sell advertising, subscriptions, start IPO's, or make any profit off the free or subscription use of streaming copyrights, then a smaller per-stream royalty still applies.

There is a *myth* that when you download a song, you own it - *that is absolutely false*. Whether you download, purchase a CD, or stream a song of any kind, you are still *only renting or licensing that copyright*.

The *copyright creators & investors own the song* since it's their lawful private property, not the *public*, not the *performing rights organization*, and most certainly not the *music licensee*.

⁵ www.ghosttunes.com

⁶ <http://musictechpolicy.wordpress.com/2014/07/13/garth-brooks-says-ill-take-the-80-they-can-have-the-20/> July 13, 2014 by Chris Castle - Garth Brooks Says I'll Take The 80, They Can Have the 20

The primary goal of GEO in this rate proceeding, in addition to proposing a *reasonable* rate and terms that reflect the *true value* of the DSR copyright and underlying work, is to restore *control, negotiation, permission*, and mostly *profit* back to the rightful private property owners — all digital sound recording (“DSR”) copyright creators, owners, investors, heirs and assigns.

Pandora, Spotify, and Google have had *plenty of time to grow*, in fact Spotify is now making a profit UK.⁷ These are billion-dollar companies that waste tens of millions of dollars each year on their extravagant lifestyles, rents and monthly million-dollar pay-outs.^{8 9 10 11}

Looking at it from a fundamental mathematical point of view, any proposed rate that starts with numeral \$0.00, means there literally is no rate — it’s nothing. As the late-great sound recording artist Billy Preston once sang, “*nothing from nothing leaves nothing, you gotta’ have something if you want to be with me*”.

Over the past 15 years, major label executives, performing rights organizations, multiple federal government agencies, and a handful of “non-profits”, trade organizations, and music lobbyists in Washington DC have made *catastrophic mistakes, miscalculations* and *decisions* that have *ruined the lives and livelihoods of many thousands* of talented and deserving songwriters, music publishers, artists, performers, musicians, singers, engineers, producers, studios and sound recording creators in LA, NY and Nashville.

⁷ <http://www.digitalmusicnews.com/permalink/2014/10/07/spotify-now-profitable-uk> Spotify Is Now Profitable In the UK, Tuesday, October 7, 2014 by Paul Resnikoff

⁸ <http://www.digitalmusicnews.com/permalink/2014/01/30/spotifyrentmanhattan>

⁹ <http://www.usmagazine.com/celebrity-news/news/sean-parker-wedding-pictures-show-billionaires-lavish-redwood-ceremony-201318>

¹⁰ <http://www.forbes.com/sites/stevenbertoni/2013/06/26/sean-parkers-wedding-by-the-numbers/>

¹¹ <http://www.thestreet.com/story/12554263/1/pandora-cries-poor-as-executives-get-filthy-rich.html>

As a DSR creator, GEO begs the three Copyright Royalty Board Judges to begin to change the landscape of digital music copyrights by taking a hard line on DSR copyright protection for the creators and copyright owners, not the whims or so called “business models” of a *handful of music licensees* - especially webcasters, internet radio and streamers.

When it comes to copyright, GEO agrees with SoundExchange that there is *no differentiation* between interactive, non-interactive, on-demand or non-demand streaming, these are merely technical definitions that have now “blurred” that have nothing do with basic copyright law and several hundred years of good precedent: *for copyright*, not against copyright.

Using copyrighted material without the author’s consent is stealing the fruit of a man’s labor, no different than stealing his car from his driveway, minus the physical act or altercation.

This is a *moral* question of the issue of *theft*, something that even a child can understand.

I, as a visual arts (VA), performance arts (PA), and sound recording (SR) music copyright creator and owner for over 30 years, understand that there is no difference between a non-subscription or subscription rate when it comes to basic copyright law which trumps those made-up technical terms 100% of the time. The term non-subscription is a brand new term for a faulty business model and doesn’t suddenly take precedent over 220 years of American copyright law with a long tradition and lawful precedent in England and elsewhere. We hope the Judges adopt this fundamental position during their deliberation if they don’t already hold this position.

Streamers paying less for songs for non-subscribers is really an insult to copyright owners since they are giving away my private property against my will. Incredibly, streamers then want me to take less money, while I watch the music licensee steal my DSR because the attached underlying work copyright is subject to the DOJ PRO consent decrees.

With a Copyright Bundled Streaming Account in Proposals 2 and 3, the problem of paying only \$.0012 or \$.0005 per-stream is alleviated by paying for the various 4 basic copyrights up-front in dollars, not nano-pennies, one time per-service.

Streamers constantly claim that as their subscriber base grows, all copyright owners will make more money, soon. So, let's hold them to their word and this is why Percentage of Revenue drops on a per year to make up for increased profits by Pandora and Spotify due to "scaling".

In addition, as streamers sell more local and national advertising, taking away billions of dollars from traditional terrestrial radio advertising dollars like iHeartRadio, music copyright owners must share in the wealth in stock options, IPO's, advertising sales, increased subscription rates, investor direct payments and other non-royalty profits, not the current "*peasants's dilemma*"¹² so brilliantly described by computer scientist and author in "*Who Owns The Future.*"

An excerpt is provided in this document.

GEO realizes that these performance rates are a so-called "substantial increase" from the current \$.0012 to \$.0022 rate per copyright stream; however, to a copyright creator and investor, it's known as a "below market rate" which is literally the understatement of the century for copyright owners. Secondly, what the streamers forget is that a per-song up-front rate is a "pass through" payment that doesn't cost them anything, in fact, they could possible make a small percentage. If streamers say, "*that will ruin our business model*", my response is simple, "*you can't raise money on a so-called 'business model' built on copyright infringement.*"

¹² See full excerpt at end of this Statement and part <http://www.wired.com/2013/04/digital-music-is-like-a-mortgage/>

“Willful ignorance” of the law only works for so long and hiding behind “permissionless innovation” while knowingly breaking US copyright law, property law, etc, is the problem.

All American music creators have been held down for far too long now and we beg the Judges to let us make an actual *profit*, not the current guaranteed losing proposition we are bound to. Pandora and other streamers like Spotify and Google have had plenty of time to “*get their businesses off the ground*.”¹³

Current and proposed rates by Pandora and even SoundExchange are unsustainable for copyright creators and that is why GEO is in this proceeding, to make it *profitable* for independent sound recording labels, and all self-contained artists like myself who write, sing, perform, record, risk, invest and so we all can afford to pay for all our future songs and albums.

We have the right to thrive, not just survive at the expense of 3 central servers owned by 3 major streamers who pay 3 major labels and 4 performing rights organizations (“PROs”), with 3 major broadcasters who use *their only product, songs, to sell billions of dollars worth of* advertising, subscription rates and make other “non-royalty” profits. Copyright owners have the *absolute right to profit from their own private property* and we beg the Judges to let us share not only in the per-performance royalties but also the future IPO’s, stock options, direct advances, subscription fees and all other revenue “non-royalty” income streams that are supposed to pay for American copyrights that subsidize these start-ups while the executives extract millions.

GEO further prays the Judges will please consider the above **Per-Performance** and **Copyright Cloud Locker** Proposals and Rates seriously and if the Judges are allowed by statute

¹³ BMI attorney told me this was the reason the minimum statutory rate mechanical of 9.1 cents was abolished (without Congressional approval) for all streams while the CRB knows a stream has a mechanical part and in the opinion of GEO, not just an on-demand stream - all streams which are subject to the minimum statutory rate.

to allow to lower these Rates to compromise with Music Licensing Services in this proceeding or raise these rates, then GEO looks to the discretion and wisdom of the Judges.

Major labels no longer compete, actually selling product or records, and would not survive in 2014 without all the stock options, 18% equity position in Spotify, advertising money, subscription rates and upfront “digital breakage” payments from streamers like Pandora, Spotify and Google.

There is no way that any independent record label can survive the .0012 or .0025. for a DSR. or underlying work¹⁴, especially when both copyrights are at literally fixed at zero cents.

.0012 multiplied by 1 million streams or DSR performances is only \$1200 dollars income, that’s with no middleman who takes his share of the deal plus all the aggregators.

On terrestrial radio 1 million plays earns \$1 million dollars!

So, with streaming, there is no way to profit when an album costs a minimum \$25,000 to upwards of \$250,000 for a standard major label if you’re lucky with no superstar budget of \$1,000,000 or the \$25,000,000 million for just promotion on a major pop star, then only sell a few hundred thousand units - not quite worth the investment to a normal, *reasonable* person.

1 million performances on terrestrial radio pays up to \$1,000,000 dollars per 1 million performances according to BMI¹⁵ and without necessarily comparing the underlying work performance rate in §115 with a §114 DSR, just a performance in general which in this case is about *a dollar a performance*, but to a much larger per-performance audience.

¹⁴ <http://www.digitalmusicnews.com/permalink/2013/09/24/making> Taylor Swift’s Label: If We Keep Making \$0.000001, We Can’t Keep Making New Records...Scott Borchetta by Paul Resnikoff. September 24, 2013

¹⁵ http://www.crainsnewyork.com/article/20131201/MEDIA_ENTERTAINMENT/312019981/musicians-get-a-new-paymaster Crain's NY, Musicians Get A New Paymaster by Aaron Elstein, December 1, 2013

If 1 million customers download a song on iTunes for .99 cents and listen to it just once (like a performance of the digital sound recording and the underlying work) 1 million times, the underlying work gets at least \$91,000 dollars which used to sustain Music Row. See Chart 2.

But on the DSR digital sound recording copyright on a download, the profit is 1 million times \$.61 cents which is \$610,000 dollars for an iTunes download and it should be the same for streaming, one-time and up-front.

Quite a difference in profits for the same exact copyrighted property performed in an almost exact manner.

However, streamers have turned 1 million listeners on terrestrial radio for \$1 million dollars into 1 million listens for \$16 or \$60 dollars in general. That is the travesty of letting a few people have a monopoly on price-fixing and central economic planning - it never, ever works.

As songwriters and music publishers become independent labels owners here on Music Row, and other music hubs, as the 14 to 1 ratio forces music publishers to become master sound recording creators and not songwriters and publishers, it shows how the bad behavior and expert lawyering of a handful of streaming company music licensees and their lobbyists can destroy.

NAB even commented in the Music Licensing 2 hearing held by the Judiciary Committee that “*the core objective of copyright law is the public good. Not the creator’s interest. Not the user’s interest. But the interest of the public at large*”.¹⁶

This basic lack of understanding of rights may be the biggest hurdle copyright owners face in 2015.

¹⁶ <https://www.nab.org/documents/newsRoom/pressRelease.asp?id=3443>

As one streamer has said, “I went from *buying music* to being a *listener*”. Well, under that logic, everyone should “go from *buying food* to being an *eater*”.

OTHER ARGUMENTS

In President John F. Kennedy’s famous Inaugural address in 1961¹⁷ he referenced the time-tested theory of *individual natural rights* which the entire Declaration of Independence and United States Constitution is based on, including the *copyright clause*. Kennedy said, “*The belief that the rights of man come not from the generosity of the state, but by the hand of God*”.

Whether the Judges believe our rights come from a Creator or naturally by way of our individual humanity, copyright law and legal precedent pre-dates the formation of the United States and is an established right. Copyright is not only a right to the fruit of one’s labor and mind, but also an established private property right like real property.¹⁸ Copyright is also a well established “bundle of rights” which also includes the long held real property right of “the right to exclude.” Kennedy also referenced in that same speech to “*let us never negotiate out of fear, but let us never fear to negotiate.*” That is precisely what he did, yet no court ordered it, he was forced to make peace and individually negotiate when it counted.

While our task in these proceedings is not as dire, the central question we are trying to answer is the same. “*How do we solve negotiation*”? Negotiation is a conundrum that has puzzled the entire world for thousands of years and that will *never*, ever be solved collectively or

¹⁷ <http://billofrightsinstitute.org/resources/educator-resources/americanpedia/americanpedia-documents/jfk-inaugural-address/>

¹⁸ http://www.law.gmu.edu/assets/files/publications/working_papers/1431.pdf George Mason University School of Law. Written by Adam Mossoff - Professor of Law, INTELLECTUAL PROPERTY AND PROPERTY RIGHTS 2013

by government decree, *it can only be done by two willing parties.*

Do we negotiate by the use of *government force*, price-fixing at a millionth of a penny, and involuntary central economic planning or is it by real free market negotiations of a real world “willing buyer and willing seller” in a real world “voluntary negotiation”?

Over the past 2 years I have spent the entire time researching, learning, and meeting with involved parties, but *it's time I should have spent promoting an album I just finished, writing and recording new songs — creating new copyrights*, but there is no longer a reason since the incentive to create has been obliterated by a perfect storm of anti-copyright music licensees and their attorneys.

The customer paying a few dollars per-song up-front is the only solution left.

“DIGITAL BREAKAGE”

As mentioned by other participants early in this proceeding and in GEO's reply to the Interim Protective Order dated October 6, 2014, the term “digital breakage” refers to direct payments by streamers to the 3 Major Labels (“3ML”) in the form of advances, equity grants, advertising dollars, subscription profits, IPOs, investors and other forms of non-royalty income that is not paid to copyright creators and performers. In other words, extremely “good and valuable consideration”. NAB and Pandora filed earlier Motions and Request for Documents in this case, for example in the March 12, 2014.¹⁹

Under Schedule A, Request for Documents, the NAB and Pandora are attempting to

¹⁹ THE NATIONAL ASSOCIATION OF BROADCASTERS' CONSOLIDATED (1) JOINDER IN PANDORA'S MOTION FOR ISSUING SUBPOENAS AND (2) MOTION FOR ISSUANCE OF SUBPOENAS TO APPLE INC. AND THE THREE MAJOR RECORD LABELS - SCHEDULE A - REQUESTS FOR DOCUMENTS.

subpoena the Apple agreement from the The Majors and Apple and the “digital breakage” issue is mentioned specifically, *“For each agreement produced or requested to be produced in response to Request Number 1., Document sufficient to show any advances equity grants paid or provided by Apple to the record company.”*

So, GEO is making the exact same point as NAB and Pandora are making in the Request for the Agreements containing these advances, stock options, side deals and other “non-royalty” compensation. Respecting private property and private agreements, GEO doesn’t need to see these agreements and would be satisfied if only The Judges had access to these RESTRICTED documents to address this issue of advances for lack or loss of future copyright royalties on streaming, internet radio, or webcasting.

As GEO wrote in it’s October 6, 2014 RESPONSE TO INTERIM PROTECTIVE ORDER, “At the beginning of this proceeding, Pandora and NAB even complained in their Motions for Issuance of Subpoenas that *“this proceeding will be substantially impaired and Pandora will be severely prejudiced in the absence of the information sought”* from Apple and the major labels in particular - for not having a copy of everybody’s private agreement. **GEO is just as substantially impaired and severely prejudiced as Pandora in the absence of the same exact information.”**

THE RIAA AND SOUNDEXCHANGE

Back in 1971, when the RIAA was apparently way cooler than it is now, RIAA president Stanley Gortikov was called to testify in front of the House Judiciary Committee. His great quote was, *“the pirates skims the cream of what artists and record companies offer except for one particular ingredient, which he avoids like the plague...our risks.”*

This is the exact predicament all independent and individual digital sound recording copyright creators are in with all these new streaming, internet radio, webcasting, and video streaming corporations.

100% DATA AND 100% TRANSPARENCY

100% Data Transparency, Per-song royalty. I cannot stress enough how important data transparency is — 100% Transparency. Hiding behind a computer is not longer an excuse on any platform.

The main idea is that “computers ruined the music royalty business and *computers can fix the music royalty business*”. **That means 100% Data Collection and Transparency in real time with direct deposits to all copyright owners in a bundled split into the various bank accounts on a daily basis.** There is no excuse anymore.

As of September 12, 2014, BMI²⁰ has announced that it “will no longer be printing and sending detailed royalty statements through the mail”. BMI has gone completely paperless which is great and the only logical next step. Direct deposit will now be the primary mode of payment.

Pandora, Spotify, YouTube and all streamers must be 100% Transparent with their data so copyright owners can have an honest accounting both performances and therefore royalties.

In Webcaster III’s FINAL DETERMINATION OF RATES AND TERMS²¹ in DocketNo. 2005-1 CRB DTRA, 72 FR 24084 (May 1, 2007)(“Webcaster II”) describes the following for “services substituting for “copyright owner’s the streams of revenue.”

²⁰ <http://www.bmi.com/paperless> http://www.bmi.com/benefits/entry/direct_deposit_of_royalties

²¹ <http://www.loc.gov/crb/proceedings/2009-1/docs/final-determination-rates-terms.pdf> excerpt Pages 1-3 Copyright Office. From *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009)

SERVICES SUBSTITUTING FOR "COPYRIGHT OWNER'S OTHER STREAMS OF REVENUE"

“a lengthy review of the history of the sound recording compulsory license” and this history is summarized by the United States Court of Appeals for the District of Columbia Circuit in *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009) — GEO focuses on section *Id.* [17 U.S.C. § 114(f)(2)(B)(i) which states “Specifically, they must consider whether "the service may substitute for or may promote the sales of phonorecords" or otherwise affect the "copyright owner's other streams of revenue.”

B. STATUTORY BACKGROUND

A lengthy review of the history of the sound recordings compulsory license is contained in the Final Determination for Rates and Terms in Docket No. 2005-1 CRB

This history was summarized by the United States Court of Appeals for the District of Columbia Circuit in *Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board*, 574 F.3d 748, 753-54 (D.C. Cir. 2009), as follows:

[Since the nineteenth century, the Copyright Act protected the performance right of "musical works" (the notes and lyrics of a song), but not the "sound recording." Writers were protected but not performers.]

In 1995, Congress passed the Digital Performance Right in Sound Recordings Act. Pub. L. No. 104-39, granting the owners of sound-recordings an exclusive right in performance "by means of a digital transmission." 17 U.S.C. § 106(6); see *Beethoven.com LLC v. Librarian of Cong.*, 394 F.3d 939, 942 (D.C. Cir. 2005). The Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, "created a statutory license in performances by webcast," to serve Internet broadcasters and to provide a means of paying copyright owners. *Beethoven.com*, 394 F.3d at 942; see 17 U.S.C. § 114(d)(2), (f)(2): To govern the broadcast of sound recordings, Congress also created a licensing scheme for so-called "ephemeral" recordings "the temporary copies necessary to facilitate the transmission of sound recordings during, internet broadcasting." *Beethoven.com*, 394 F.3d at 942-43; see 17 U.S.C. § 112(e)(4).

Congress has delegated authority to set rates for these rights and licenses under several statutory schemes. The most recent, passed in 2005 [sic], directed the Librarian of Congress to appoint three Copyright Royalty Judges who serve staggered, six-year terms. See 17 U.S.C. § 801, et seq. These Judges conduct complex, adversarial proceedings, described in 17 U.S.C. § 803 and 37 C.F.R. § 351, et seq., and ultimately set "reasonable rates and terms" for royalty payments from digital performances. 17 U.S.C.

§ 114(f). . . . Rates should "most clearly represent the rates and terms that would have been negotiated in the marketplace between a willing buyer and a willing seller." *Id.* [17 U.S.C. § 114(f)(2)(B)] "In determining such rates and terms," the Judges must "base [their] decision on economic, competitive and programming information presented by the parties." *Id.* **Specifically, they must consider whether "the service may substitute for or may promote the sales of of phonorecords" or otherwise affect the "copyright owner's other streams of revenue."** *Id.* § 114(f)(2)(B)(i). The Judges must also consider "the relative roles of the copyright owner and the transmitting entity" with respect to "relative creative contribution, technological

contribution, capital investment, cost, and risk." *Id.* § 114 (f)(2)(B)(ii). Finally; "[i]n establishing such rates and terms," the Judges "may consider the rates and terms for comparable types of digital audio transmission services and comparable circumstances under voluntary license agreements described in subparagraph (A)." *Id.* § 114(f)(2)(B)

Intercollegiate Broadcast System, Inc. v. Copyright Royalty Board, 574 F.3d 748, 753-54 (D.C. Cir. 2009).

Digital download sales and CD sales have been "cannibalized" by streaming services and it is something that is obvious and common sense, but streamers have falsely claimed that streaming doesn't cannibalize ²² sales and the evidence shows this is not true at all.^{23 24 25}

CONCLUSION

First, GEO respectfully requests that the Judges adopt a per-stream rate that is *reasonable for copyright creators' business models*, first and foremost. GEO also respectfully requests within the authority the Judges are allowed by federal law in this digital sound recording (DSR) proceeding to set the rates, terms and determine value, to consider adopting a "copyright bundle" or a "streaming account" minimum rate of \$.50 cents per-song, one-time, up-front payment, per-licensee on each individual DSR copyright payable to the DSR copyright owners. This cloud locker type payment should be *paid by the customers one-time per-song for unlimited plays* and adjusted for basic real inflation using the federal Consumer Price Index (CPI).

²² <http://www.techspot.com/news/53300-streaming-music-is-slowly-cannibalizing-digital-download-sales.html> July

²³ <http://www.cnbc.com/id/101640730> Is Spotify cannibalizing the music industry? Arjun Kharpal, May 29, 2014 CNBC

²⁴ <http://www.billboard.com/articles/business/6236365/album-sales-hit-a-new-low-2014> Billboard, Album Sales Hit A New Low

²⁵ <http://www.digitalmusicnews.com/permalink/2014/09/04/itunes-song-downloads-will-drop-39-five-years> September, 2014 iTunes Song Downloads Will Drop 39% In Five Years...by Paul Resnikoff

GEO respectfully requests the Judges adopt Proposal 3 “The Beatles” Cloud Locker proposal, the Proposal 2 Cloud Locker Streaming Account proposal, or in between.

Second, if the Judges do not adopt a version of Proposal 3 or Proposal 2, GEO respectfully requests that the Judges adopt a minimum rate of \$.10 cents per-stream royalty rising in increments outlined in Proposal 1 and increased per-stream royalties should also apply thereafter on all DSRs performances if profits from stock options, advertising, subscriptions, IPOs, etc. or other non-royalty profits are being made. Both rates should be tied to actual future inflation and are *reasonable* since they have been \$.00 for 15 years and other people’s property.

\$.50 cents per-song up-front or \$.10 cents per stream are *a bare minimum* of what DSR creators and investors need to re-invest in new DSRs, much less make a profit from their own creations. Of course, these two rates are suggested minimum rates and GEO respectfully requests the Judges consider these proposed benchmarks to set the final rates for all DSRs.

Third, GEO respectfully request that the Judge’s adopt a percentage or per-song plan where DSR copyright owners share in the digital breakage profits aka. up-front payments, stock options, advertising dollars, streaming company sales, future IPOs by streaming music licensees, etc. in addition to if the above per-song rates are adopted. All future rates should reflect the lack of payments the past 15 years and adjustments for inflation - past and future inflation.

OTHER ISSUES

THE RECORD LABELS DEVALUED THEIR OWN CATALOGS

In a Bloomberg article on Jul 14, 2011 titled "Spotify's Ek Wins Over Music Pirates With Labels' Approval".

"Worldwide revenue for the recording industry peaked in 1999 at \$27 billion, according to the International Federation of the Phonographic Industry. By 2008 it had plummeted to \$14 billion.

Spotify Is Born

That year, Universal Music, EMI Group Ltd., Sony Music Entertainment, Warner Music Group and Merlin, which represents independent labels, each agreed to an experiment: They would give their entire catalogs to a Swedish startup run by Daniel Ek, who was then 25 years old and had no experience in the music industry.

That company, Spotify Ltd., entered seven European markets and began giving out invites to listen to 13 million songs, on demand, for free. "We had to try everything," Sundin says.

At the time, the industry was pressing European countries to write laws in line with a European Union directive to stiffen civil enforcement of intellectual-property rights. Record labels had to win not only in court but also among the public.

Sundin saw a demo of Spotify and laid out the case to his bosses in London. "To get legislators on our side," he explained, "we need services for the kids.""²⁶

TECHNOLOGY PROTECTION MEASURES ("TPM's")

Congressman Bob Goodlatte recently held a hearing on CHAPTER 12 OF TITLE 17²⁷ regarding Technology Protection Measures or TPM's. The Congressman states "For example, the music industry in recent years turned away from widespread use of TPM's" and he's correct. It's time we turned that around, with the CRJ's help we can correct this theft and slow it down.

GEO realizes this may be out of the scope or jurisdiction of the CRJ's but if the CRJ's can require all music licensees, web-casters, internet radio, streamers, to implement more a list of TPM measure just as iTunes does with their requirement that all users have an Apple ID and if

²⁶<http://www.bloomberg.com/news/2011-07-14/spotify-wins-over-music-pirates-with-labels-approval-correct-.html>

²⁷ http://judiciary.house.gov/index.cfm/hearings?Id=28AD8641-B834-41AD-A595-83BBCD992046&Statement_id=4E1A91D7-7AA3-4E58-AE19-120036EC7B3C

you send a download to a friend, they have to register with his Apple ID first before it will work.

Furthermore, Apple recently has partnered with U2 to make an encrypted music file and there are other solutions to protect from piracy and track music files.

CAN THE CRJ's SET RATES FOR ATTORNEYS AND STREAMING EXECUTIVES?

1. What if the CRJ's were to suddenly set all billable hourly rates **for all counsel in this proceeding at .0012 per-hour? What if counsel were forced** by the Copyright Royalty Judges to live on .0012 cent per-hour, for the next 5 years, *or all future rate proceedings just like DSR copyright creators are now forced to do in real life*? Would counsel continue representing broadcasters and streamers if the CRJ price-fixed all attorney rates at .0012 per hour. Would that adversely affect counsel and cannibalize their \$1000 per hour rate?

2. Most importantly, Why aren't the **music licensees and millionaire-billionaire streaming executives and employees forced** by the Copyright Royalty Judges to live on .0012 cent per-hour or day for their salaries *with no stock options*, for the next 5 years just like we §114 DSR and §115 copyright creators are **now forced to do in real life**?

*If streaming executives are going to use the force of the federal government to keep BOTH §114 DSR and §115 songwriter/publishers profits at literally \$.00 per-song, **shouldn't they be held to the exact same standard and have the federal government set their income and profits?***

Musicians are told my music licensees, "The money doesn't matter, you do music for the love of music, don't you? You'd do music even if they didn't pay you, so Write On," as BMI's slogan says.

Well, if that's true and as streamers say, "We love music too, that's why we're in the streaming business, it's all about the music man." Then great, it's settled, **streaming executives should get the exact same amount that they preach music creators deserve which is \$.00 per-hour and \$.00 in stock options.** It's only fair.

The 15 Biggest Lies told by Music Streaming Companies

1. Music Streaming Companies are not making money or a profit.
2. Once we “*scale*” artists and rights holders will start to make money...soon.
3. Because you’re only *renting* a song when you stream it as opposed to *buying* a song when you download it, the streaming song is *worth less* money.
4. Free Music has changed behavior the past 20 years and there is no putting that genie back in the bottle.
5. Get on a tour bus and go sell t-shirts, forget about your copyrights.
6. We pay 70% of our income to “rights holders”, how can we possibly pay more?
7. It would be impossible for us streamers to charge customers on a per-song basis, like it was for 100 years, like every other product.
8. You don’t understand, I used to “*buy music*”, but now I’m “*a listener*”.
9. This is a new generation, you don’t understand kids today grandpa.
10. We want to do a direct license with you, for your sake.
11. We’re in this business because of our deep appreciation for musicians and *for our love of music*.
12. Copyright is outdated like the horse and buggy.
13. We *love* songwriters and creative music types who create such “genius” songs!
14. Look everybody, we’ve set a benchmark royalty rate in a *free, fair, or effectively competitive market*.
15. This is a voluntary negotiation outside government intervention, so we’re now a willing buyer and you’re now a willing seller.

Here is a great excerpt from computer scientist and inventor Jaron Lanier.

“Drove My Chevy to the Levee but the Levee Was Dry” by Jaron Lanier from his book “Who Owns The Future”.

“The levees weathered all manner of storms over many decades. Before the networking of everything, there was a balance of powers between levees and capital, between labor and management. The legitimizing of the levees of the middle classes reinforced the legitimacy of the levees of the rich. A symmetrical social contract between non-equals made modernity possible.

However, the storms of capital became super-energized when computers got cheap enough to network finance in the last two decades of the 20th century. That story will be told shortly. For now it’s enough to say that with Enron, Long-Term Capital Management, and their descendants in the new century, the fluid of capital became a superfluid. Just as with the real climate, the financial climate was amplified by modern technology, and extremes became more extreme.

Finally the middle-class levees were breached. One by one, they fell under the surging pressures of super-flows of information and capital. *Musicians lost many of the practical benefits of protections like copyrights and mechanicals.* Unions were unable to stop manufacturing jobs from moving about the world as fast as the tides of capital would carry them. Mortgages were over-leveraged, value was leached out of saving, and governments were forced into austerity.

The old adversaries of levees were gratified. The Wall Street mogul and the young Pirate Party voter sang the same song. All must be made fluid. Even victims often cheered at the misfortunes of people who were similar to them. Because so many people, from above and below, never like levees anyway, there was a triumphalist cheer whenever a levee was breached. We cheered when musicians were freed from the old system so that now they could earn their living from gig to gig. To this day we still dance on the grave of the music industry and speak of “unshackling musicians from labels.”¹ We cheered when public worker unions were weakened by austerity so that taxpayers were no long responsible for the retirements for the retirements of strangers.

Homeowners were no longer the primary players in the fates of their own mortgages, now that any investment could be unendingly leveraged from above. The cheer in that case went something like this: Isn’t it great that people are taking responsibility for the fact that life isn’t fair?

Newly uninterrupted currents disrupted the shimmering mountain of middle-class levees. *The great oceans of capital started to form themselves into a steep, tall, winner-take-all, razor-thin tower and an emaciated long tail.*

How Is Music like a Mortgage?

The principal way a powerful, unfortunately designed digital network flattens levees is by enabling data copying.* For instance, a game or app that can’t be easily copied, perhaps because it’s locked into a hardware ecosystem, can typically be sold for more online than a file that contains music, because that kind can be more easily copied. *When copying is easy, there is almost no intrinsic scarcity, and therefore market value collapses.*

*As we'll see, the very idea of copying over a network is technically ill-founded, and was recognized as such by the first generation of network engineers and scientists. Copying was only added in because of bizarre, tawdry events in the decades between the invention of networking and the widespread use of networking.

There's an endless debate about whether file sharing is "stealing." It's an argument I'd like to avoid, since I don't really care to have a moral position on a software function. Copying in the abstract is vapid and neutral.

To get ahead of the argument a little, my position is that we eventually shouldn't "pirate" files, but it's premature to condemn people who do it today. It would be unfair to demand that people cease sharing/pirating files when those same people are not paid for their participation in very lucrative network schemes. Ordinary people are relentlessly spied on, and not compensated for information taken from them. While I would like to see everyone eventually pay for music and the like, I would not ask for it until there's reciprocity.

What matters most is whether we are contributing to a system that will be good for us all in the long term. *If you never knew the music business as it was, the loss of what used to be a significant middle-class job pool might not seem important. I will demonstrate, however, that we should perceive an early warning for the rest of us.*

Copying a musician's music ruins economic dignity. It doesn't necessarily deny the musician any form of income, but it does mean that the musician is restricted to a real-time economic life. *That means one gets paid to perform, perhaps, but not paid for music one has recorded in the past. It is one thing to sing for your supper occasionally, but to have to do so for every meal forces you into a peasant's dilemma.*

The peasant's dilemma is that there's no buffer. A musician who is sick or old, or who has a sick kid, cannot perform and cannot earn. A few musicians, a very tiny number indeed, will do well, but even the most successful real-time-only careers can fall apart suddenly because of a spate of bad luck. Real life cannot avoid those spates, so eventually almost everyone living a real-time economic life falls on hard times.

Meanwhile, some third-party spy service like a social network or search engine will invariably create persistent wealth from the information that is copied, the recordings. A musician living a real-time career, divorced from what used to be commonplace levees like royalties or mechanicals, is still free to pursue reputation and even income (through live gigs, T-shirts, etc.), but no longer wealth. The wealth goes to the central server.*

*There are laws that guarantee a musician some money whenever a physical, or "mechanical" copy "of a music recording is made. This was a **hard-won levee for earlier generations of musicians.**

Please notice how similar music is to mortgages. When a mortgage is leveraged and bundled into complex undisclosed securities by unannounced third parties over a network, then the homeowner suffers a reduced chance at access to wealth. The owner's promise to repay the loan is copied, like the musicians' music file, many times.

So many copies of the wealth-creating promise specific to the homeowner are created that the value of the homeowner's original copy is reduced. The copying reduces the homeowner's long-term access to wealth.

To put it another way, the promise of the homeowner to repay the loan can only be made once, but that promise, and the risk that the loan will not be repaid, can be received innumerable times. Therefore the homeowner will end up paying for that amplified risk, somehow. It will eventually turn into higher taxes (to bail out a financial concern that is "too big to fail"), reduced property values in a neighborhood burdened by stupid mortgages, and reduced access to credit.

Access to credit becomes scarce for all but those with the absolute tip-top credit ratings once all the remote recipients of the promise to repay have amplified risk. Even the wealthiest nations can have trouble holding on to top ratings. The world of real people, as opposed to the fantasy of the "sure thing," becomes disreputable to the point that lenders don't want to lend anymore.

Once you see it, it's so clear. A mortgage is similar to a music file. A securitized mortgage is similar to a pirated music file.

In either case, no immediate harm was done to the person who once upon a time stood to gain a levee benefit. After all, what has happened is just a setting of bits in someone else's computer. Nothing but an abstract copy has been created; a silent, small change, far away. In the long term, the real people at the source are harmed, however."

Excerpt From: Jaron Lanier. "Who Owns the Future?." iBooks. <https://itun.es/us/EnUAG.I> From digital pages 106-113 or 75-77 in book form.

NOTE: The following is from GEO's FIRST RESPONSE to REQUESTS for DOCUMENTS but was not submitted to the CRJs, only the participants. This information seemed more appropriate for this AMENDED STATEMENT containing new information for the Judges to consider. Also note I was asked two questions to prove 1. does streaming cannibalize download sales and 2. show how streaming adversely affects GEO?

**“DOCUMENT REQUESTS DIRECTLY RELATED TO THE WRITTEN DIRECT
TESTIMONY OF GEO MUSIC GROUP”**

Relating to both Requests 146 and 147 on page 33 in general, George D. Johnson (GEO) is an individual singer²⁸, songwriter, and music publisher in Nashville, TN the last 17 years and for these proceedings an individual digital sound recording (DSR) creator or author, DSR recording artist and performer, DSR copyright owner, self-financing DSR investor, and DSR promoter d.b.a. Geo Music Group (GMG formerly GEO), an independent record label.

Since I, George Johnson, as an individual, am “*doing business as*” d.b.a. Geo Music Group and file personal tax returns, not being or filing as a corporation, there are no “annual financial statements (including balance sheets, income statements, profit and loss statement, and cash flow statements) for the years 2009 to the present,” nor are there any “financial forecasts and/or projections of revenues and cost covering the time period 2014 to 2020.”

Quite frankly, since streaming has destroyed the songwriter, music publisher, independent DSR artist and independent DSR label *business model* that has lasted over 100 years, it’s impossible to have any kind of forecasts. Making money creating music has now become a 99% guaranteed losing proposition. *Price-fixing* of all streaming rates at \$.00, including DSR rates, and *streaming cannibalization* has systematically destroyed creators.

In addition, none of GEO’s music has been played on terrestrial radio, having no market share, no radio consultants, nor promotional budget to get played on secondary radio that doesn’t even pay for sound recording copyrights, much less getting played on reporting stations without spending millions of dollars.

Finally, d.b.a. Geo Music Group or I, George Johnson, an individual, have no documents related to (i) through (vi) on pages 33 and 34 of Document Request 147.

²⁸ www.georgejohnson.com

However, d.b.a. Geo Music Group has had two standard *direct license* agreements for “downloads only” with Apple iTunes since around 2010 and Google Play since around 2011, see agreements in Exhibits 2, Numbers 9, 10 and 12. Obviously, Apple’s transparent terms are a 70/30 percent split for the §114 DSR copyright owner profiting 70%, minus 9.1 cent per-song paid directly to the §115 owners, while Apple profits 30% per-download.

Additionally, I, George Johnson or d.b.a. Geo Music Group have not activated the streaming service agreements for Apple or Google, Apple iRadio and Google All Access, or joined any other interactive, non-interactive, subscription or non-subscription streaming services such as Pandora, Spotify, Beats, Rhapsody, or Rdio. This is primarily because all streaming executives and employees are the main individuals who prosper from copyright by making all the profits, salaries, and personal benefits along with the 3 major labels (“3ML”), RIAA lobbyists and Soundexchange for §114 DSR copyrights (ASCAP & BMI for §115) — while the copyright creators are continually and sorely mistreated, then told to accept a few crumbs at a price-fixed “below market rate” of .0012 or less for their own creation and personal private property, over and over again.

*Current counsel in this proceeding would **never accept** forced government price-fixing of .0012 cents per-billable hour for **your income**.*

*What if the CRJ’s were to suddenly set all billable hourly rates **for all counsel in this proceeding at .0012 per-hour** for the next year and all future rate proceedings? Would that adversely affect counsel? Of course it would. See Exhibit 2, No. 84 and 85 or Exhibit 3 Charts.*

So, why wouldn’t price-fixing DSR creators at .0012, .0005 or .00012, as some participants have suggested, *not adversely affect current counsel?*

Would forcing all attorneys in this proceeding, or all American attorneys, to accept .0012 cents per billable hour *cannibalize* your \$500 to \$1,000 dollar hourly rate? Of course it would.

Just like music or food, if you give away free lawyers at .0012 cents per hour, who is going to pay \$100, much less \$500 an hour for lawyers ever again?

Imagine if 52 recording artists and independent record labels controlled and price-fixed the hourly billable rate of every lawyer in America at .0012 per-hour in 5 year increments?

With all due respect to my fellow participants, how is it *moral* for 52 lawyers to price-fix the income for every song, recording artist, independent label (songwriter and music publisher) in America at .0012 per-song in 5 year increments for DSRs they didn't write or record? Especially, *without any input or consent* from the copyright creators and owners — 52 to 0?

Most importantly, why aren't the **music licensees and millionaire-billionaire streaming executives**^{29 30 31} *forced* by the Copyright Royalty Judges to live on .0012 cent per-hour or day for their salaries **with no stock options**, for the next 5 years *just like a DSR copyright creators are now forced to do in real life*?

If streaming executives are going to use the weight and force of the federal government to keep §114 DSR and §115 songwriter/publishers at \$.00 per-song, *shouldn't they be held to the exact same standard and have the federal government set their income and profits at \$.00?*

²⁹ <http://www.dailymail.co.uk/news/article-2831851/Multimillionaire-Pandora-founder-sparks-outrage-neighbors-plans-chop-trees-build-massive-concrete-glass-mansion.html>

³⁰ <http://www.forbes.com/sites/stevenbertoni/2012/01/04/spotify-daniel-ek-the-most-important-man-in-music/> "and Ek, at 28, worth over \$300 million on paper"

³¹ <http://www.forbes.com/sites/kashmirhill/2013/06/27/facebook-billionaire-sean-parker-hates-the-world-he-helped-create/>

George Johnson's (GEO's) music videos^{32 33} are on YouTube with a standard YouTube agreement for the past several years and have made \$0. YouTube is the world's largest music streaming service ³⁴ and where people go to get "*their free music first*".

However, it now appears clear that YouTube and Google mostly profit through *selling advertising to U.S. corporations on pirated (music) copyright sites*^{35 36 37}, all while *actively promoting the pirated sites on their Google search engine* ³⁸. **This adversely affects GEO and all copyright creators, §114 and §115 and cannibalizes download sales and on Google Play.**

YouTube and Google end up with the vast majority of that revenue, yet the valid copyright authors and private property owners with alleged protections from American copyright law, Congress, The Copyright Office, Librarian, the CRB and other constitutional protections, have no practical recourse *including these rate hearings and expensive free market litigation*.

Hopefully, sooner than later, The Librarian, The Copyright Office and the CRJ's will find a way to stop YouTube and Google from profiting from pirated American music copyrights immediately if it's in their authority and without having to go to Congress.

On Access Hollywood, Garth Brooks, *the biggest selling RECORDING artist of all time*, recently said YouTube executives were "*sweet*" and "*they're all like twelve*", yet YouTube was

³² <https://www.youtube.com/watch?v=J1j7qEtZp4Q>

³³ <https://www.youtube.com/watch?v=q1Rtk8XdbSw>

³⁴ <http://www.newyorker.com/magazine/2014/11/24/revenue-streams>

³⁵ <http://thetrichordist.com/2014/10/10/is-google-still-serving-ads-on-illegal-sites/>

³⁶ <http://www.musictechpolicy.com> Blake Morgan on How Google Alerts Drive Traffic to Pirates and Hurt Indie Artists and Labels, August 28, 2014 by attorney Chris Castle.

³⁷ <http://variety.com/2013/digital/news/google-slammed-by-mississippi-attorney-general-for-inaction-on-piracy-1200938008/>, Exhibit 113

³⁸ <http://thetrichordist.com/2014/10/20/the-return-of-brand-sponsored-piracy-googles-artist-shakedown-continues-but-this-time-they-really-really-really-mean-it/> Exhibit 114

still, *“the devil”* since *“they claim they pay people,”* but in reality they don’t pay *“squat”* for *“millions and millions and millions of views”*³⁹, Exhibit 2, Number 102 and full quotes below.

Again, here is the *biggest selling sound recording artist of all times* telling us that YouTube is *“the devil”* for not paying copyright owners. So, what does that say about all the similar streaming participants, former too, in this proceeding?

Remember, Garth Brooks went and *started his own streaming service* that **pays copyright owners** instead of taking nothing for his music then giving “twelve year old” “kids” control of how his music is marketed. Taylor Swift didn’t start her own streaming company, but she sure did exercise her long held **“right to exclude”** her *entire catalog* from the “kids” over at Spotify in Sweden, London and Luxembourg.

If you watch the full video of Garth, the most important thing he said was, “You don’t get out (of YouTube), *thanks to our wonderful*, uh, *somebody judging on this one*, uh, **the government**. Yeah, it’s totally backward right now.”

Could 100 years of **government intervention** into the music market be the *real problem*?

Of course, it is.

Why is the federal government so obsessed with regulating the incomes of recording artists, singers and songwriters is the *real question*? Remember, these are just *songs*.

On a Fox News interview, Garth went on to say, *“I think the thing is you just have to put the music first,”* Brooks told FOX411. **“The government passed a lot of laws really quickly that allowed technology to kind of just use music as a tool without paying for it, and I’d like to see**

³⁹ <http://countrymusicnation.com/garth-brooks-stands-songwriters-criticizes-youtube-53761> Exhibit 102

the government revisit that because music could come back to front and center if we could get some help.”⁴⁰

He’s exactly right, *we really do need some help* from The Copyright Office⁴¹ and the CRJ’s and *hope that this proceeding is the beginning of raising rates for all music copyright creators.*

Also attached, Exhibit 2, Number 6 and 7, are GEO’s total incomes for both iTunes and Google Play download services which are only around four to five hundred dollars in downloads on iTunes the past 4 years and virtually nothing on Google Play over the past 2 years.

For the purposes of this proceeding, GEO has made the following 4 spreadsheets:

Exhibits 2, Number 18 and 19, which are the approximate costs of both albums I created, produced and financed personally: Album 1 - “George Johnson featuring The Jordanaires & The Memphis Horns” which cost approximately \$26,720 and Album 2 - “Still Pissed At Yoko” which cost approximately \$31,320. In the footnotes are links to both albums on iTunes through *direct license*^{42 43} with d.b.a Geo Music Group, since 2010, and no third-party aggregators or distributors to possibly cook the books, steal royalties, go bankrupt, or not report performances.

Exhibits 2, Number 20 and 21 are Break-Even Analysis charts for both my albums. According to the Break-Even Analysis: Album 1 at \$10 dollars would take 2,675 CDs or album download sales to simply break-even and Album 2 at \$10 dollars would take 3,135 CDs or album download sales to break-even.

⁴⁰ <http://www.foxnews.com/entertainment/2014/11/19/taylor-swift-garth-brooks-artists-lead-fight-against-spotify/>
“Taylor Swift, Garth Brooks and other artists lead the fight against Spotify”

⁴¹ http://copyright.gov/docs/musiclicensingstudy/comments/Docket2014_3/Geo_Music_Group_and_George_Johnson_Music_Publishing_MLS_2014.pdf

⁴² iTunes link to Album 1 <https://itunes.apple.com/us/album/george-johnson-feat.-jordanaires/id527771274>

⁴³ iTunes link to Album 2 <https://itunes.apple.com/us/album/still-pissed-at-yoko/id658644966>

These break-even analyses do not include the *time* most American recording artists put in plus the additional *cost* of an office, rent, overhead, recording equipment, computers, software, instruments.

I received no salary for 4 years of time recording 2 albums on my own.

Royalties are my *only source of profit for my copyrights* and hard work, but they have both been stolen by streamers and a handful of others who are supposed to be looking out for me, *but only look out for their own self-interests*.

Then add all the time and money it took for many independent artist like me to *write the songs* for the album for no money, over months or years time, writing everyday, re-writing, creating the ideas and original melodies and lyrics, taking all the risks, paying for the demo recordings, then paying for the master sound recordings, mixing everyday for months, all for no money, only costing me a great deal of money — with no return, or hope of return, because of streaming royalty price-fixing and streaming cannibalization at literally no money per-stream — \$.00. I have yet to see a U.S. minted copper .0005 or .001 nano-penny in circulation. In fact, because of rampant inflation, the US Treasury wants to do away with not only the 1 cent copper penny, but the 5 cent nickel too.⁴⁴

The number of DSR streams in the chart below is what it would take *to simply break-even on both albums*. **It clearly demonstrates how difficult it is to even break-even at 11,827,272 streams or 25,850,000 streams, with no profit for the copyright creators and no reward for years of unpaid hard work.**

⁴⁴ <http://blog.aarp.org/2014/03/12/are-you-ready-to-kiss-the-penny-and-the-nickel-goodbye/?cmp=NLC-RSS-DAILY-BULLETIN-DSO-031314-W2-305757>

	Approx. Album Cost	Price per DSR Stream	Streams Break Even	CD Break Even a \$10 per CD
Album 1	\$26,720	\$0.0012	21,683,333	2,675
Non-Subscription Rate		\$0.0022	11,827,272	
Album 2	\$31,320	\$0.0012	25,850,000	3,135
Subscription Rate		\$0.0022	14,100,000	

Many albums cost \$250,000 to \$1,000,000 for a major label recording budget, only *the producer* gets a big share of that money up-front, the artist some too, while independent or jazz albums can run as low as \$10,000 to \$15,000, Exhibit 28⁴⁵. In my case, and for most artists, I'm leaving out literally thousands of hours I can't even remember putting in at this point over 4 years of recording, overdubbing, mixing and working literally almost every day for no profit.

PANDORA

Pandora is the only streaming company that has promised GEO a direct license in March of 2014, see Exhibit 2 Number 49, but they have not been ready to sign one as of yet.

Chris Harrison of Pandora contacted me last year, see Exhibit 2, Number 77, originally offering my publishing company, George Johnson Music Publishing ("GJMP") (formerly with BMI)⁴⁶, Exhibit 2 Number 75, a possible direct license since I had signed BMI's Digital Right Withdrawal Addendum ("DRWA") which recognized music publishers' right to exclude certain digital rights from ASCAP and BMI and sign direct licensing deals with streamers, see Exhibit 2, Number 76 and Pandora Exhibits in Exhibits 3.

⁴⁵ <http://www.nytimes.com/roomfordebate/2014/11/06/is-streaming-good-for-musicians/if-streaming-is-the-future-you-can-kiss-jazz-and-other-genres-goodbye>

⁴⁶ <http://www.bmi.com/licensing/entry/drw> April 1, 2014, Exhibits 75 & 76 confirming termination of GJMP agreement from BMI VP, International Legal & Business Affairs Mr. John Coletta. October, 14, 2014.

Because GJMP withdrew from BMI, in March of this year Pandora subpoenaed me for a deposition that took place in May for their Pandora vs. BMI case in Judge Stanton's rate court.

At this point, Pandora presumably doesn't want to set any benchmarks with GEO or d.b.a. Geo Music Group in this proceeding for the DSR or GJMP for any future §115 proceedings. This ultimately slows everybody down, not in months but in years.^{47 48} The Internet Radio Royalties rate proceeding for 2011-2015, which began in January-February of 2009 and took until April of 2014 to complete, is the perfect example.

It took over 5 years to complete one rate hearing which finally set the rate at \$.00 anyway, when the real free market could have negotiated a real rate in a matter of hours, days or weeks between a real willing buyer and a real willing seller.

Only the federal government and Congress could design a digital music royalty system that takes 2 to 5 *years to negotiate one rate* in this age of *real-time Billboard charts on Twitter, computer tracking and direct deposit - to be honest, it's embarrassing*. These are the easily fixable and foreseeable negative consequences of multiple government regulations and force.

Additionally, as I'm now learning, any rate court proceeding *stops all the participants from negotiating* for a year or two, so how can that be good for American commerce? How can that not adversely affect GEO?

Not only am I forced to stop negotiating with participants who wait 2 entire years for the CRJ to set the final rate for them, but now I'm forced to *not even contact any potential music licensee without dragging them into one of these proceeding, and that's not a great way to do business* — wasting their time, subjecting their private agreements, and possibly costing them a

⁴⁷ <http://www.broadcastlawblog.com/2014/04/articles/copyright-royalty-board-reissues-decision-on-internet-radio-royalties-for-2011-2015-same-rates-but-new-analysis/>

⁴⁸ <http://www.loc.gov/crb/fedreg/2014/79FR23102.pdf>

ton of money in attorney fees. It's also not fair to this participant or any potential music licensee and adversely affects us both by **wasting our time and keeping the public from enjoying new works - for literally years.**

In addition to the nano-royalty price-fixing process we are now engaged in, this process also adversely affects and substantially delays any possible direct agreements for my §114 DSRs and §115 songs which may (or may not) provide a small source of income in the meantime through direct licensing.

For example, I have a Christmas song I'd have loved to put on Pandora in time for the holidays the past 2 years, and all streaming services this and last year. See Pandora emails in Exhibit 3. It's called "Santa's Wearin' Blue This Year" that I co-wrote and then performed with the legendary Jordanares. I also bought the other 50% of the publishing from my co-writer, and now own 100% of the publishing and 100% of the analog and digital sound recording.

As much as Pandora may want to get my Christmas song on for the holidays, from a rate setting perspective, it would not be in the self-interest of Pandora to set any type of benchmark that isn't lower than the current rate Pandora is paying. I would argue that it is in the best self-interest of Pandora to set a realistic benchmark for all music creators, §114 and §115 much sooner than later, but paying creators fairly is something Pandora refuses to do.

While I'm not blaming Chris Harrison who has been professional to me personally, I'm just using it to illustrate how in the real world, not this imaginary "hypothetical marketplace", that *this (or any) CRB process once again adversely affects participants* in marketing their music, as well as financially since *the process allows for the cannibalization at \$.00 per-stream*. This bureaucratic process substantially delays getting our music on Pandora, *or getting to market on any other service. 2 years is a long, long time. To then set the rate at \$.00 is incredible.*

These rate proceedings in general, delay me and also *delay Pandora* from making certain deals while participating in a CRB or ASCAP/BMI rate court.

Then, the “Voluntary Negotiation” period is simply ignored by all participants.

Pandora was recently able to *voluntarily negotiate* an alleged “free market” agreement with independent aggregator Merlin, without assistance from the CRJs, but press reports are the rate⁴⁹ is even lower than current rate proceeding set DSR rate for a non-subscription stream from \$.0013 down to \$.0011.

This alleged “benchmark” would possibly lower rates for all American DSR and underlying composition copyrights even more when they are already at \$.00 per stream.

We pray that the Judges will not let that happen since all rates have been way too low, way too long for all music copyrights, SRs, DSRs and PA composition copyrights for streaming, downloads, and CD’s.

THERE IS NO FREE MARKET IN MUSIC AND PROBABLY NEVER WILL

Most importantly, what everyone seems to casually overlook or *willfully ignore* is there is no free market in music. Furthermore, there is no “effective competitive market” either.

To be clear, there hasn’t been a free market or effective competitive market in music royalties or music copyrights for over 100 years. With all due respect to the CRJ’s, there can never be a free market in music as long as we have a federal CRB rate proceeding that centrally plans and price-fixes §114 or §115 music copyrights, then price-fixes them \$.00 per song.

Therefore, there is no free market or effective competitive “benchmark” as long as there is:

1. a forced compulsory license for §114 or §115
2. a forced “first use” for §115

⁴⁹ <http://www.indie-musicnetwork.com/pandoras-merlin-deal-with-indie-labels-pays-just-50-of-soundexchanges-crb-request/>

3. a forced statutory rate of \$.00 for §114 or §115 streaming royalty rate
4. forced price-fixing of rates for §114 and §115
5. *a CRB rate court process for §114, §115 and PRO rate courts*
6. the DMCA safe harbor provision allowing copyright infringement is still in place
7. the DOJ consent decree on §115 songwriters and music publishers is still in place

So, when I hear that any streamer announces a new “benchmark” and then claims it’s a so-called “*free-market*” deal⁵⁰ with a “*willing buyer, willing seller*”, I realize everyone is suddenly “*willfully ignorant*” of what the definitions of “free”, “market”, or “free-market” really are, since it’s self-evident. “Willing buyer, willing seller” is just a term or art, legalese, a reference in a section of code, **but it does not mean a real willing buyer and a willing seller in an actual free market**, and another *hypocritical term that means the opposite of what any reasonable person would conclude*. If any streamer or participant does a deal “outside the consent decree” or “outside the CRB process”, especially while currently a participant in this CRB proceeding, **it is most certainly NOT a benchmark deal in an actual free market**.⁵¹

Furthermore, it is not an “effectively competitive market” deal for all of the same reasons stated above. **There cannot be an effectively competitive market with the federal government and music licensees intervening in the market to limit all their competitors income and access.**

Again, what is clear is as long as there is a CRB system, there can never be a functioning and prosperous free market in music — **with all due respect to the CRJs.**

⁵⁰ <http://rainnews.com/pandora-licensing-public-conference-call-investors/>

⁵¹ <http://www.billboard.com/biz/articles/news/digital-and-mobile/6114165/free-market-often-repeated-at-music-licensing-hearing>

For streamers, all music licensees, and now oddly the 3MLs, *the CRB process is simply the final backstop they all run to to set their incredibly low price in the end since they know it's their guarantee*. Again, this is why nobody voluntarily negotiates in the "Voluntary Negotiation" period or settles in the "Settlement Periods". This standard 2 year hearing slows the entire payment and access process down to a standstill in the world of computers, internet, and real-time music charts on Twitter — proof of why a real free market instantly solves all of this.

THE 3ML'S THREE MAJOR LABELS HAVE HACKED THE AMERICAN ROYALTY SYSTEM BY PRICE-FIXING ALL MUSIC COPYRIGHTS AND CANNIBALIZING DIGITAL PHONOGRAPH SALES THAT ADVERSELY AFFECTS GEO & EVERYONE

In a recent article from New Yorker magazine called "Spotify: Friend or Foe?", Exhibit 2, Number 121, it lays out the overall dilemma we face which is common knowledge here on Music Row, LA and NYC — that the 3ML's or 3 Major Labels who are ALL now foreign owned **sold out** every American songwriter, music publisher, artist, and independent label, *but especially their own music publishing companies, songwriters, and artists*, so those label executives and foreign corporations, *not the American copyright creators*, could make all the profits along with streaming executives, Silicon Valley and Wall St, and **not pay for copyrights**.

"AM/FM radio pays the writer of the song on a per-play basis, but gives the performer and the owner of the recording of the song — generally, the record label — nothing. On digital streaming services like Spotify, the situation is nearly reversed: the owners of the recording get most of the performance royalty money, while the songwriters get only a fraction of it. *Songwriters, who can't go out on the road, are particularly hard hit by the loss of publishing royalties. As one music publisher put it, "Basically, the major music corporations sold out their publishing companies in order to save their record labels. Universal Music Publishing took a terrible rate from streaming services like Spotify in order to help Universal Records. Which, in the end, means that the songwriter gets screwed."*⁵²

⁵² <http://www.newyorker.com/magazine/2014/11/24/revenue-streams>

That also means **every Universal co-writer, co-publisher and really every American songwriter and music publisher got “screwed” too**, despite being a §115 issue, it’s still directly connected to §114 hearings - not on benchmark price comparisons but *hacking* the rate, and bypassing *all* American copyright creators, their rightful income and profits.

It’s clear that **Vivendi-France** no longer wanted to pay for an American MSR “minimum statutory rate” of 9.1 cents per mechanical, since a **stream is a mechanical** and still subject to the 9.1 cents MSR per-stream.

Somehow, Vivendi, Sony and WMG were able to *transfer that MSR payment burden to ASCAP and BMI at .00000012 cents* instead of Vivendi having to keep paying American songwriters and music publishers 9.1 cent per stream, as the MSR was law for almost 100 years.

That begs the question all songwriters and music publishers have — *what right* do ASCAP and BMI have to collect for streaming when the 3ML have traditionally paid the mechanical MSR and are the ones responsible for paying §115 costs?

What this clearly illustrates is how the 3MLs have used these DSR§114 rate hearings to helped facilitate a low §114 rates but also a low §115 rate. Especially when you have §114 RIAA’s Steve Marks⁵³ arguing for lower §115 rates in §115 proceedings, **which they have no business being in.**

Now, we see why — to really hack both §114 and §115 copyright royalty rates to \$.00 while the “digital breakage” and “non-royalty” stock options, equity grants, equity profits, IPOs, subscription profits, advertising profits, investor working capital, “above market” salaries and health benefits for their families, etc. keep flowing into the 3MLs and streaming executives pockets **that would normally go to all American copyright owners.** How would you feel?

⁵³ <http://www.riaa.com/mobile/newsdetail.php?id=692D1CFB-5B21-0DB9-899E-6A6C4E8F561D>

Most importantly, what Universal Records did here to their own Universal Publishing is crucially important since it seems perfectly clear that the parent corporation of Universal Records, **Vivendi headquartered in France** directed the publishing arm to take the fall.

Did Sony Records, **Sony Corp headquartered in Japan** do the exact same thing to their own §115 songwriters and/or §114 DSR royalties in past rate DSR hearings just like Vivendi-France did to their own publishing companies in this example — keep costs down by only offering a rate that is next to nothing for both SR and PA copyrights? **Warner Music Group?**

Why would they do this? *Because the 3MLs have falsely assumed that “digital breakage” income is free and clear since it’s not specifically mentioned in most 3ML artist and songwriter contracts, therefore, the 3MLs believe they are now exempt from American copyright law and have no fiduciary or contractual duty to pay anything to artists, songwriters, music publishers — much less pay for the attached co-writer’s or co-publisher’s lawful copyright.*

This also perfectly illustrates how Universal Publishing, and all their songwriters, co-writers and co-publishers, were forced to **“take one for the team”** and *sacrificed* to help Universal Records, and in turn help Vivendi-France make a profit.

Then add the \$404 million dollars that went directly to Vivendi-France in the sale of Beats to Apple while American copyright owners got nothing. In reality, EVERY American and Universal songwriter, co-writer and co-publisher were really the ones who took one for “team Vivendi-France”. Isn’t the job of The Copyright Office and CRJ’s to protect the value, integrity and sovereignty of American copyrights, their owners, and our rate setting process?

If you starve and defraud songwriters and their music publishers, you’ll have no §115 songs to create any §114 DSRs to set a rate for.

The key is, since the 3MLs control 100% of the §114 sound recording copyright, they simply go right and ahead license it to whomever they want *without permission* from the underlying §115 copyright owners and use the excuse that ASCAP, BMI, SESAC or Harry Fox is now responsible for §115 royalty payments.

When the 3MLs used to license §115 mechanicals for “record clubs” at 1 cent for 12 CD’s, the original “subscription model” they would at least secure an up-front license with all the music publishers first and pay up-front for 10,000 units.

Just like the proven record club subscription model, the streaming subscription model must also make sure the songwriters, music publishers, and in this proceeding §114 DSR recording artists and independent record labels get paid, up-front, and at a profit.

That is how the music business is supposed to work but the 3ML’s didn’t want the burden of having to pay songwriters, co-writers or competing music publishers anymore. And, it’s also an anti-trust issue since the 3ML’s are using their “market aggregation of copyrights” *in government rate courts* to keep their §114 DSR and §115 songwriting and publishing competition locked into price-fixed statutory rates that ensure no profits since independents don’t have side deals for “non-royalty” income or “digital breakage”.

This is no different, yet way worse, than any “Cadillac Records” record label over the years, like Chess Records, since at least you got \$1000 dollars in your pocket and a brand new Cadillac every once in a while, maybe a new house, but no royalties checks for the most part.

Today, with streamers it’s no money, no Cadillac, no house, no royalties, no food, no fun.

As the Washington Post put it in a film review of the movie of Chess Records, “*But the movie also makes clear that he (Chess) was no saint, shuffling royalty payments from one musician to another at times -- as when (Chuck) Berry is jailed for transporting a minor across*

state lines -- and enriching himself while some of his artists go hungry. The film takes its name from Chess's practice of handing out Cadillac cars to his hitmakers, instead of paychecks.”⁵⁴

It is interesting since common sense would tell you that GEO and the 3ML *are on the same side of enforcing protection of their copyrights and copyright royalty income*.

However, with the advent of streaming in particular, “digital breakage” with direct payments, equity stock grants, ad dollars, subscription dollars, investor dollars, etc. *always* trump copyright law and respect for creators. It’s simple greed and fraud.

I don’t want to pick on the 3ML’s but we have to be honest, they have hacked the entire copyright royalty system in their favor to keep both copyrights, SR and PA, *at literally nothing*.

Independent artists and independent record labels must gain back control of their copyrights and profits and letting only the 3MLs set the statutory royalty rates for the rest of us — rates that benefit only the 3MLs, and streamers, through the 3ML’s market share volume and enormous “digital breakage” profits on the side.

Why are only the 3MLs, the streamers and music licensees allowed to have enormous salaries, great jobs, health care, company cars, stock options, company perks in addition to the streaming executives extracting millions of dollars of stock equity profit on a monthly basis, for years⁵⁵, see Exhibits 2, 86, 94 and 96, while the DSR creators and artists receive virtually nothing at nano-pennies for their own property? As Garth Brooks recently said it’s “totally backwards”.

Remember, several streaming executives, like Sean Parker formerly of Facebook, Napster and now Spotify, are actual former **convicted**⁵⁶ **“computer hackers”** as kids, arrested by the

⁵⁴ <http://www.washingtonpost.com/wp-dyn/content/article/2008/12/04/AR2008120403926.html>

⁵⁵ <http://www.secform4.com/insider-trading/1230276.htm> See Exhibit 2, Number 67-SEC Filings Insider Trading - Pandora Media Inc. (P)

⁵⁶ <http://www.businessinsider.com/sean-parker-profile-2013-6> “As he had been hacking at the time, his computer's identity was exposed. The FBI came calling, arresting the 16-year-old, who was sentenced to community service. But it was the making of him.”

F.B.I. for breaking into computers — so it's easy to see how copyright piracy and now streaming without paying for copyrights has become Parker's and Daniel Ek's life's work. **Hacking is what they do.**

Sean Parker and Daniel Ek, and all other streamers, have also now successfully “hacked” the 3MLs and their DSR catalogues, the CRB and rate court processes, the American music royalty and copyright systems, and American music creators' *profits and income* — while Vivendi, Sony, Warner Music Group (“WMG”) and Spotify sent those *profits back overseas to Sweden, France, Japan, Russia, England and Luxembourg.*

These same exact Spotify executives, Parker and Ek also created and operated *illegal* peer-to-peer file sharing **pirate sites like uTorrent⁵⁷ and Sean Parker created Napster which was shut down by a U.S Federal Appeals Court for serial copyright infringement.**

Sean Parker, who shouldn't *be allowed within 1000 feet* of any music file, mp3, WAV, AIFF, etc. after what he did at Napster,⁵⁸ then joins Spotify in Stockholm, Sweden **to once again pirate American music copyrights.**

Sean Parker now calls Spotify, Napster 2.0⁵⁹ and he's right. There is no difference between illegal piracy at \$.00 and so called “legal streaming” at \$.00 for lawful copyrights that are the property of millions of individual American music creators. **Streaming is legal piracy.**

As a singer/songwriter who owns his own publishing and creates his own DSRs, I'm specifically representing the independent performer/artist and DSR creator/owner in this proceeding who's royalties flow through SoundExchange or by direct license.

⁵⁷ <http://www.newyorker.com/magazine/2014/11/24/revenue-streams> “Ek was one of the pirate band. Before starting the company, he had briefly been the C.E.O. of uTorrent, which made money in part by monetizing pirated music and movies on BitTorrent, a major file-sharing protocol.”

⁵⁸ <http://news.bbc.co.uk/2/hi/entertainment/1893904.stm>

⁵⁹ <http://www.hollywoodreporter.com/news/spotify-napster-sean-parker-268724> “Spotify Is What We Wanted Napster to Be, Sean Parker Says”

Music copyright creators *have never been participants* in these CRB DSR rate proceedings and one main reason why *all music royalty rates* has been so low, so long, for us copyright owners and creators, is no participant cares about us. If they did care, they'd pay us.

As the late, legendary "Bread & Butter"⁶⁰ singer and "Wind Beneath My Wings"⁶¹ songwriter Larry Henley told me in November of 2014, "*We're the punished and we've done nothing wrong.*"⁶² That says it all if you create music and really goes to the heart of why we are here.

Are we in these rate hearings for the *benefit of the copyright creator* or *only for the music licensees' profits and their self-interests*?

I joke that maybe we should change the name of The Copyright Office to The Music Licensee Office or the Copyright Royalty Board to the Music Licensee Royalty Board since it's usually 52 attorneys representing only music licensees and 0 representing copyright creators.

My evidence is the *work product* of all these rate hearings found in 17 CFR 385.1 through .26 which has clearly been finely crafted over the years to benefit music licensees 100% and benefit all DSR creators, songwriters and music publishers 0%.

385.3 codifies a 9.1 mechanical, *then spends 385.10 through 385.26 undoing the 9.1 cent MSR rate* with **30-day free downloads** while **giving away my hard-earned \$114 DSR for free.**

We here on Music Row in Nashville, TN and every other American music creator truly hope *the CRJs will put themselves in the shoes of copyright creators* and **look at the time, sweat equity, talent, practice, risk, hard work and real money it takes to create DSR art** based on

⁶⁰ <https://www.youtube.com/watch?v=OWMHdOmy-6Y>

⁶¹ <https://www.youtube.com/watch?v=oiS8YokFzeY>

⁶² Larry Henley co-wrote "Wind Beneath My Wings" and was the lead singer for The NewBeats whose biggest hit was "Bread and Butter".

music and lyric, **and let all American music copyright owners prosper, flourish and profit for once — much sooner than later.**

Unfortunately, a few of the music licensing participants still in this hearing and many who have already withdrawn *do not believe in American copyright, capitalism, profit, or private property rights*, unless it's *their* copyright, profit, or property right.

Current streaming rates assures there is *no profit whatsoever in creating an album or DSRs in 2015* where streamers make all the money from customers and the copyright owners and creators are told repeatedly to get on a tour bus and sell t-shirts - **forget about your copyrights.**

As the legendary Rosanne Cash recently said, "*If you download and pay, it's the same as buying a record. **If you stream, it's just dressed-up piracy.**"*"⁶³

Finally, in addition to already addressing several points relating to the two questions found in 146 and 147 in the above comments, GEO more specifically answers being "*adversely affected by the price-fixing of music royalty rates,*" and the assertion that "*digital download sales and CD sales have been cannibalized by streaming services*".

Not having the money nor legal credentials to go through depositions and interrogatories in this rate proceeding, GEO must rely on evidence found in the entire public record including news stories, public documents, past rate court proceedings, constitutional law, precedent, and past copyright legislation.

Request 146 - PRICE-FIXING RATES

As to the assertion that "*GEO has been adversely affected by the price-fixing of music royalty rates.*"

⁶³ <http://rainnews.com/rosanne-cash-streaming-is-piracy/>

FIRST, let me **instantly prove this** by once again asking every participant in this rate proceeding one simple question, *would you or your income be adversely affected by the price-fixing of your salary at .0005 to .0023 cents per-hour, per day, or per-case?*

Of course it would, *so why wouldn't GEO or any DSR artist be as adversely affected?*

Whether by a new 2015 DOJ consent decree controlling all American attorneys, a compulsory statutory rate, or 3 federal judges in DC price-fixing all attorney fees at .0012 for the next 5 years, *how many attorneys in this proceeding would keep participating and managing CRB rate hearings at a mandatory .0012 per-hour in the future?*

How many of you would keep practicing law at .0012 per hour?

Compare .0012 per-hour to your current billable rate from this CRB rate proceeding and multiply it over 2 years time. The total amounts may show quite a difference.

Many politicians and lobbyists preach we need a “federal minimum wage” of \$10 or \$15 dollars per-hour for every American worker.

Well, what then is the minimum wage for an American DSR creator?

Should there be a MSR for all §114 DSRs or all SRs for that matter, like their used to be for all §115 copyrights⁶⁴ ?

It can take 3-4 hours to write a song, an hour or two if you're really lucky, sometimes it takes 6 hours to complete a song, sometimes 10 or 20 hours, sometimes week or months, sometimes 10 years. If we multiplied any of those hours by a \$10 or \$15 dollars minimum wage it would *still be more income than 1 million streaming performances!*

“Come Together” by The Beatles only has 5 million performances (§114 and §115) in almost 50 years on terrestrial radio, “Imagine” by John Lennon only has 7 million radio

⁶⁴ I still wonder how the MSR for a mechanical stream went from 9.1 cents to \$.00 overnight especially since the CRB argued in favor of it in a past §115 rate hearing?

performances in the past 40 years, while DSRs and songs on Spotify stream 8 to 9 million times in one week, and pay virtually nothing!⁶⁵

Remember, studio time for DSRs can cost \$50 to \$125 per-hour multiplied by 10 hours for a day, plus multiple overdub sessions, mixing hours, studio player costs, AFM union costs, instrument cartage, and multiple engineering/mixing costs at \$25 to \$50 per-hour and more. How can anybody pay that back at \$.00 per stream? They can't.

As the great singer-songwriter Leonard Cohen says, it can take him 10 years sometimes to write one great song. If you listen to the Jeff Buckley's^{66 67} DSR album version of Cohen's incredible §115 song, "Hallelujah", clearly the customer and "the public" are the beneficiaries to such a perfect marriage of §114 and §115 copyright creation.

However, the question then becomes, if through free streaming the consumer and "public" have already benefited from Mr. Cohen's personal private property, is Mr. Cohen then *allowed to benefit from his years of work* when for example, one of the 3ML sells out his §115 copyright since they own 100% of the §114 Buckley DSR?

But just like a \$500 or \$1,000 per-hour attorney in this proceeding, there are years of practice, schooling, hard work, and real experience that justify such a rate, but all those same attributes are only applied to attorneys and not to recording artists and independent DSR labels (songwriters and music publishers for that matter) in these proceedings and it is *hypocritical*.

As for my DSRs, it took me over 2 and a half years to record Album 1 and around 2 years to record Album 2 with no pay for me, only constant expenses paid by me from savings and

⁶⁵ http://charts.spotify.com/?object=tracks&rank=most_streamed&country=global&windowtype=weekly&date=latest

⁶⁶ https://www.youtube.com/watch?v=WIF4_Sm-rgQ original DSR master with over 12,000,000 views on YouTube.

⁶⁷ <https://www.youtube.com/watch?v=y8AWFf7EAac4> video with over 48,000,000 views on YouTube on this one link.

personal income. Do I get any reward? Do I ever get to set my price for more than \$.00? Do I ever get to control my private property that I created? Do I ever get any profit from my hard earned underlying works and DSRs in this case? Clearly, “no” is the answer to all of the above.

SECOND, Look no further than 37 CFR 385.1 through 385.26, the “work product” of past §114 rate (and §115) hearings to *instantly prove* that price-fixing, especially at \$.00, adversely affects GEO or any DSR copyright creator.

It is self-evident that paying any person \$.00 for any product makes it mathematically impossible for them to profit. Not even *a penny* for our *thoughts*.

A first grader could figure out that 1 times \$.00 is \$.00 or 1 million times \$.00 is still \$.00.

If free DSR trials, free DSR downloads, free downloads with no 9.1 cent §115 MSR payment, free DSR promotional giveaways, and price-fixing DSR royalty rates at \$.00 isn’t enough to *adversely affect* a DSR copyright holder at “free” and \$.00 “profit”, **I don’t know what is.**

If 37 CFR 385.1 through 385.26 isn’t price-fixing, **adversely affecting** GEO and all §114 creators, plus **directly causing streaming cannibalization of downloads** and CD’s by **giving my copyrights away for FREE**, again, **I don’t know what is.**

Coincidentally, 37 CFR 385.1 through .26 is “*the devil*” to quote Garth since it’s exactly where the *details* live that YouTube and all other streamers use and abuse to destroy §114 and §115 music royalties — especially 385.10, 385.11 *with it’s 30 day limited download* **with no guaranteed MSR §115 9.1 cent royalty found in 385.3!** Then 385.12 and it’s *royalty pool calculations*, 385.13 *technical definitions*, 385.14 *promotional giveaways* of music copyrights without the copyright owner’s consent, 385.17’s *de novo*, 385.20, 385.21 “*free trial royalty rate*”,

385.22, 385.23 and “*free-trial periods*” in 385.24 giving away my DSRs without my permission for my property.

The 37 CFR 385 *price-fixing scheme* and the entire CRB rate system process *adversely affects every American DSR copyright owner* through the *loss of value and profits* of our DSR copyright. Sadly, the price-fixing of my own personal private property is ironically controlled here by the 3MLs and then 3rd parties without any direct “financial interest” in my copyrights.

Most importantly, the CRB rate setting process of giving away a copyright at \$.00 **is the main reason for cannibalization**, with all due respect to the CRJ’s.

The sad irony of 37 CFR 385 is that 385.3 begins by recognizing the MSR 9.1 cent mechanical for a download or CD, but then spends the rest of it denying the mechanical MSR as applied to a stream. 37 CFR 385.11 and the rest through 385.26 goes on to destroy the value of my hard earned DSR copyright by giving it away to everybody for free with free downloads, no 9.1 cent for my §115 song and \$.00 “royalty” for my DSR.

Just because 3 foreign record labels and a handful of new streaming companies have been given legal permission to literally PAY NOTHING for American DSR copyright creators through 37 CFR 385, does not mean that it is moral, fair, lawful or constitutional.

37 CFR 385 must be re-written starting with this DSR §114 rate proceeding.

THIRD, On the Copyright Office’s own website, former Register of Copyright Marybeth Peter’s testimony to the Judiciary Committee, 12 years ago in 2002, was that Congress realized price-fixing rates was flawed and did not provide fair compensation, “*At the time it was drafting the 1976 Copyright Act, Congress realized that the mechanical license was flawed*”

because a statutorily-set, never-changing royalty rate was inflexible and did not provide fair compensation.”⁶⁸ At least songwriters got paid \$.02 cents in 1976, now we get paid \$.00.

To those in this proceeding that would argue to copyright creators that .0005 increasing to .0011 or .0011 increasing to .0013 or .0021 fits the definition of “not statutorily-set, always changing, flexible and provides fair compensation” they should be *the first to volunteer* to have their hourly billable rate set by the CRB judges to .0005 or .0021 *immediately*.

Unfortunately, .0005, .0011, .0013 or .0021 **is still equal to \$.00, period.**

Therefore, in reality, at \$.00(insert number), the §114 DSR rate has effectively been: *never changing, statutorily set, inflexible and does not provide fair compensation* to DSR copyright creators and owners, following the powerful reasoning of Marybeth Peters’ testimony and expert experience.

FOURTH, CPI adjusted Inflation, Exhibit 3, Chart 3 inflation chart shows the *suppression* of the 1909 price-fixed MSR \$.02 cent §115 royalty for 68 years till 1976-78 till 2014, adjusted for standard government CPI inflation to what it should be in 2014 - **\$.52 cents.** The chart then compares how the drop in value of the US dollar of approximately **96%** over the last hundred years has *adversely affected every American*, but in a peculiar and punitive way due to federal price-fixing, all American §115 music copyright creators and now §114 DSR creators.

§114 DSR owners have also been *adversely affected* the past 15 years by the combination of rampant inflation, price-fixing copyrights at \$.00, which leads to cannibalization and 0 sales.

⁶⁸ <http://www.copyright.gov/docs/regstat061302.html> Statement of Marybeth Peters The Register of Copyrights before the Subcommittee on Courts, the Internet, and Intellectual Property Committee on the Judiciary United States House of Representatives 107th Congress, 2nd Session, June 13, 2002, CARP (Copyright Arbitration Royalty Panel) Structure and Process

Not so coincidentally, the sole reason for the loss of 96% of the value of the US Dollar is due to the price-fixing of interest rates, ironically also currently fixed at 0%, which has directly cannibalizes the value of the US dollar by 96% for the past 100 years to it's present 4% value of what it used to be.⁶⁹ The exact same thing has happened to music royalties for 100 years. By the government price-fixing royalties at nothing, it completely destroyed the value of the music copyrights.

We must stop price-fixing all American music copyrights at \$.00.

During those past 100 years the Copyright Act of 1909 provided for a \$.02 cent royalty in 1909 for §115 copyright holders to be split between songwriters and music publishers on a \$.50 piece of sheet music, around a whopping **\$11.75** in today's dollars.

Now, without comparing §115 royalties to §114 royalties as benchmarks but to demonstrate how continuing to price-fix DSR rates at \$.00 for the next 100 years, especially with continued guaranteed and increased inflation for the foreseeable future (QE19), will be catastrophic for copyright creators and even music licensees.

Government price-fixing of §115 royalty rates for the past 100 years has led us from 2 cents in 1909 to .0012 cents or less in 2015 — it's that simple.

Price-fixing §114 for the next 100 years starting at \$.00 can only lead to \$.0000 in 2114.

By any reasonable measure, 2 cents to \$.0012 cents after 100 years is not progress.

Especially, with \$1.00 US dollar now only worth \$.04 cents in value in the same 100 year timeframe and it's very real 96% drop in value. This is why inflation is called the "hidden tax".

⁶⁹ Why? To keep interest rates low, the Fed has to "print money out of thin air" which is exactly what it does but now on a computer screen. So, by creating more money and dumping it in the system, i.e. QE 1, QE 2, QE 3, etc. this is the sole cause of inflation, which raises the price of everything, milk, gas, food, movie tickets, cars, college tuition, etc. All to keep the price of borrowing money low and give the appearance of a stable American dollar. The current interest rate has been literally 0 for the past 5 years or more, which is un-natural and causes bubbles, booms and busts in the market. http://www.dailyfx.com/forex/fundamental/article/special_report/2010/08/10/US_Dollar_Rallies_Ahead_of_Fed_Interest_Rate_Decision.html

Add that all streaming rates have been set to \$.00 for the past 15 year *combined* with this 96% drop in the value of the US dollar and you would think it couldn't get any worse, but it can.

So, while some propose .005 to .0011 to .0029 for all DSR copyrights, it's still \$.00.

What is odd besides this separation between rates where we can't mix and match §114 benchmarks with §115 or other benchmarks is...

In effect, the CRB has fixed both §114 and §115 streaming rates at \$.00 for the past 15 years.

I have to say it again, all American music streaming copyrights have been price-fixed at \$.00 for over 15 years, which is *incredible* at face value, but as a singer, songwriter, recording artist and investor, it's a slap in the face to every American music copyright creator. It makes me sick to my stomach to think about it as a creator and a normal person. To all participants, we have the opportunity to change this and we must immediately.

How can you force all American §114 and §115 music creators to accept literally \$.00 per-song for over 15 years while everybody gets the benefit and makes billions off those works and not call it a form of economic slavery, with all due respect to real slavery?

BMI agrees to \$.00000012 for a §115 Spotify stream, then spends hundreds of thousands of dollars, if not more, on a public relations campaign telling songwriters to "Write On" at .00000012 cents per-stream.

The same could be said for §114 DSR creators who might be told to "Record On" by RIAA or now SoundExchange at \$.0012 per song.

While we're on the subject, BMI also claims in another expensive public relations campaign that BMI has been "Creating Value Since 1939." Again, I don't know how you go from 2 cents in 1939 down to .00000012 cents in 2014 and call it "creating value", "progress" or

“progressive”, especially if you care about your own members, their music, their well-being, their royalty income, careers, families, or their livelihoods?

As for value, how can I register my DSR for \$55 or \$80 dollars with The Copyright Office and then *The Copyright Office turns around and sells my new registration out the back door for \$.00 per-copyright?* It’s unbelievable when you start to look at things for as they are.

The Copyright Office, the CRJ’s, and the 52 attorneys in this proceeding **can do better than \$.00 for 15 years for American DSR creators**, and §115 songwriter and music publishers for that matter, since these §114 proceedings have helped to exploit, adversely affect and cannibalize the value of their §115 copyrights.

Then, some say we need a SEA Songwriter Equity Act to set a “free market provision” in the CRB code to allow the CRJ’s to enter other benchmarks into evidence.

My first question is how can you have an actual free market inside a 3 judge federal song tribunal that centrally plans the music royalty economy by price-fixing rates at \$.00 for DSR §114 and §115 streams? You can’t, it’s impossible. Add a consent decree and DMCA.

Hypothetically, if the SEA bill passed today, using the §115 rate in 1909 of 2 cents and using standard CPI inflation on several inflation and Federal Reserve calculators, *2 cents is now around 48 to 52 cents in real world value in 2014, and therefore, the mechanical royalty rate for a download is really around 50 cents per-song in 2014!*

Why inflation, see Ex. 3 Chart 3, is called the “hidden tax”, it’s even more onerous than the federal income tax according to Austrian Economists since inflation is unseen while taking more money to live. This is due to the automatic increasing of prices of everything combined with it’s vicious depreciation of savings and value. **So, if we are going to continue to price-fix**

§114 DSR rates, we must look the economic results and real history of past §115 rate fixing which has lasted over 100 years.

Most of us have experienced real inflation having lived through the rampant inflation in the late 70's caused by Federal Reserve's overprinting of dollars in the 60's and 70 to fund the federal welfare-warfare state — add Nixon de-coupling of the dollar to the international gold standard in 1971.

FIFTH, Lastly, in hopes of better illustrating how *extreme price-fixing* has *adversely affected all copyright owners §114 and §115*, including GEO, I recently read former DMX attorney/CEO, now Pandora's Counsel, Chris Harrison's resume on LinkedIn⁷⁰ and noticed several of his pretty incredible achievements as a "copyright attorney"^{71 72}.

As the son of a great attorney and someone who has been privileged to hire the services of some of the most incredible entertainment attorneys in Los Angeles and Nashville, I have to say that I may have never seen a better example of incredible legal skill in action than Chris Harrison in representing DMX against ASCAP and BMI attorneys.

Unfortunately, every American songwriter and §115 music publishing copyright owner who belongs to ASCAP and BMI was much poorer because of those actions, but as somebody who appreciates great attorneys, you really have to commend Chris Harrison while at DMX since his management of those two §115 cases was extraordinary and a brilliant piece of legal work.

Looking at it from a broadcaster or music licensee perspective, Chris Harrison *rolled both ASCAP and BMI attorneys in 2 separate rate courts*.

⁷⁰ <https://www.linkedin.com/in/christopherharrisonsq>

⁷¹ <http://judiciary.house.gov/index.cfm/2014/6/hearing-music-licensing-under-title-17-part-two>

⁷² <http://www.c-span.org/video/?320114-1/music-licensing-title-17&start=4040>

It's easy to see why Pandora hired him.

Unfortunately for §114 DSR creators, he's been hired by Pandora to do to SoundExchange and all independent record labels, basically the same thing he did to millions of songwriters and music publishers, a.k.a. BMI and ASCAP, when he was running DMX.

I mean no disrespect to Mr. Harrison, he's just doing his job, but these are the facts. If you are an American music creator you are so much worse off than you were 5, 10 or 15 years ago because of a handful of great attorneys like Chris Harrison and several in this proceeding.

Until counsel in this proceeding can learn to write a song, make a great record, perform it, or invest their money in a songwriter's §115 demo or §114 master recording, with a band, in a real recording studio, with a real engineer, and real players, then it might just be impossible for counsel to see the dilemmas they have helped create for all American music creators. So please, at least try and put yourself in our shoes.

Copyright owners' only hope is that instead of being an "anti-copyright attorney" for the rest of his career, Mr. Harrison and other's in this proceeding come over to the pro-copyright attorney side, and start doing their best work to enrich the lives and livelihoods of American recordings artists, independent labels, songwriters and publishers.

See the below excerpt from Mr. Harrison's resume on LinkedIn. I also noted Mr. Larson's comments at the time, of course, outside counsel in this proceeding representing Chris Harrison again but now for Pandora, about a "*complete victory in the case*" which it *truly was* for DMX, future music licensees and from a "legal win" standpoint.

GEO mention's Mr. Larson's comments about Mr. Harrison's "complete victory" to show how devastating "song courts" can be to original American music creators, §114 and §115.

More importantly, how one man's "complete victory" was a "devastating defeat" to millions of American songwriters, music publishers, and their heirs and assigns!

Finally, I would also note that ASCAP and BMI attorneys should be ashamed of themselves for getting beat that bad by Chris Harrison, going from \$41.81 to \$18.91 at BMI and \$49.50 to \$13.74 in ASCAP rate court and \$5.5 million dollars *that should have fed, housed and clothed American songwriters, families, music publishers - and paid for more song creation!*

General Counsel

DMX, Inc.

September 2008 – July 2011 (2 years 11 months) Austin, Texas

Implemented the first-ever direct licensing initiative to secure the public performance, reproduction and distribution rights to musical compositions directly from music publishers, resulting in 1,000+ licenses covering more than 7,000 catalogs.

Led successful litigation efforts to obtain the first-ever adjustable fee blanket licenses from ASCAP and BMI to afford DMX credit against its blanket fees for the public performance of works licensed directly from music publishers, in which both courts adopted DMX' position, resulting in more than \$5.5mm in annual savings.

- Broadcast Music, Inc. v. DMX, Inc., 08 Civ. 216 (LLS), 2010 U.S. Dist. LEXIS 78417, (S.D.N.Y. July 26, 2010); on appeal at 10-3429-cv (Second Circuit). BMI sought payments of \$41.81 per location per year. Judge Stanton adopted DMX' lowest proposal of \$18.91.
- In Re Application of THP Capstar Acquisition Corp. (now known as DMX, Inc.), 09 Civ. 7069 (DLC), 2010 U.S. Dist. LEXIS 131424, (S.D.N.Y. December 7, 2010); on appeal at 11-127-cv (Second Circuit). ASCAP sought payments of \$49.50 per location per year. Judge Cote adopted DMX' lowest proposal of \$13.74.

Todd Larson

Partner at Weil, Gotshal & Manges LLP

As outside counsel to DMX, I worked day-in and day-out with Chris during DMX's historic litigation against ASCAP and BMI. Rather than simply outsourcing the legal work to the outside firm, Chris was intimately involved in every step of the case, from high-level case strategy to briefing to trial. We could not have achieved the results we did -- a complete victory in each case -- without his tireless participation and razor-sharp insights.

May 12, 2011. Todd worked directly with Christopher at DMX, Inc.⁷³

⁷³ <https://www.linkedin.com/in/christopherharrisonsq>

Request 147 - §114 PROFIT CANNIBALIZATION BY STREAMERS

GEO's assertion that "*digital download sales and CD sales have been cannibalized by streaming services*".

FIRST, see Exhibits 2, Number 1, Nielsen Soundscan data from 2006-2014 shows an 80% overall decline in iTunes downloads over the past 8 years⁷⁴ and is *primary evidence* that all streaming, "paid" and free, is cannibalizing download sales. Then see Exhibits 3, Number 1 & 2 with new data for 2014⁷⁵ and **98.7 of all music transactions where streaming vs downloads!**

SECOND, Total album sales are down by **14.4%** for 2014.⁷⁶

THIRD, CD sales are down **18.9%** for 2014.⁷⁷

FOURTH, Overall chain stores album sales are also down **24.4%** for 2014.⁷⁸

At a 24% decline in sales over last year along with the significant downward trend in the first 3 statistics above, this shows the rapid move away from physical to virtual online "product". Why would any average reasonable person physically drive to a store to buy *one* physical CD for \$10 or \$12 dollars when they could stay home and download it from iTunes to save them time and a trip to the store?

Moreover, why would a potential real music consumer ever go buy a download or "physical cow" when they can "get the milk" delivered to their doorstep **for free** listening on Youtube, or "free trial periods" on Spotify, Beats, Pandora, etc and never pay or subscribe.

⁷⁴ <http://www.digitalmusicnews.com/permalink/2014/07/03/song-downloads-15-2014> Nielsen Soundscan "Song Downloads Are Down 15% In 2014..."

⁷⁵ <http://www.digitalmusicnews.com/permalink/2015/01/09/streaming-music-consumption-vs-streaming-music-revenue>

⁷⁶ <http://www.digitalmusicnews.com/permalink/2014/10/14/album-sales-14-4-percent-2014>

⁷⁷ <http://www.billboard.com/biz/articles/news/retail/6281506/soundscans-third-quarter-numbers-in-one-word-bleak>

⁷⁸ <http://www.billboard.com/biz/articles/news/retail/6281506/soundscans-third-quarter-numbers-in-one-word-bleak>

If a “listener” is signed up to Spotify for free or \$9.99 subscription rate, chances are they will still listen first for free on Youtube then endlessly stream their favorite new albums and songs on Spotify or other streamers.

FIFTH, Projections for iTunes download sales show a normal bell curve downward and a **39% drop** in sales over the next 5 years according to MIDiA Research data.⁷⁹ Like all bell curves, they don’t end well and a projected 39% drop in iTunes downloads over the next 5 years is a significant decline just like the 80% decline in iTunes downloads we have seen over the past 8 years outlined in the FIRST evidence of this section. Add an 80% decline the past 8 years and another 39% the next 5 years, that is a huge overall decline of a relatively new medium.

SIXTH, There are also many attached public articles in popular music trade sites and magazines writing about this decline.⁸⁰ The majority of articles take the position that cannibalization of download sales and CD’s is *clearly self-evident and caused by streaming services* offering free music they don’t own to “consumers” without paying for it, like all other normal consumers.

By definition there can’t be a “consumer” when streaming companies give away music for free via 37 CFR 385.1 through .26. Especially when “consumers” pay streamers not labels.

There also can’t be a “music consumer” if streamers literally don’t pay for the true value of the music — all the associated §115 copyright owners and creators and only pay the 3ML record companies.

As we are witnessing, the 3ML’s now claim they are *entitled* to keep all “non-royalty” or

⁷⁹ <http://www.digitalmusicnews.com/permalink/2014/09/04/itunes-song-downloads-will-drop-39-five-years>

⁸⁰ <http://online.wsj.com/articles/itunes-music-sales-down-more-than-13-this-year-1414166672>

“digital breakage” and that they are not contractually bound (more lawyering) to pay the rightful §114 artists and §115 songwriter/music publisher copyright owners but only themselves and investors .

Just because a “consumer” pays a streaming company \$5 or \$10 dollars a month, *which doesn't pay or negotiate with all the lawful copyright owners who have an absolute right to exclude*, doesn't make it lawful, legal, or non-cannibalizing. They are “streaming consumers”.

With streaming, the consumer is not paying for the music but primarily the 3ML's plus streaming employees and executives' extravagant lifestyles.

SEVENTH, see Exhibits 2, Number 50, “b9opp.gif” an animated GIF named “*30 Years of Music Industry Change, In 30 seconds or Less*” (adjusted for inflation)⁸¹ is probably some of the best evidence which further proves that streaming is cannibalizing download and CD sales.

It also *proves* that **all new formats always eventually cannibalize the next format, until you get to a format you can't cannibalize, which is streaming**, at least for the next 10 to 20 years.

So, the next question is *what is the next format after streaming?*

The answer is nothing since fiber-optic streaming and digital wireless streaming technology was such a revolution, *is it* for the time being and foreseeable future.

Everything from here on out will be a form of streaming or a stream that can be downloaded.

Unless we suddenly go back to physical product, *some form of direct digital*⁸² and digital

⁸¹ <http://www.digitalmusicnews.com/permalink/2014/08/15/30-years-music-industry-change-30-seconds-less> RIAA

⁸² <https://fiber.google.com/about2/>

wireless technology will always be used. It's just a matter of audio quality, broadband speed, and whether or not the CRB authorizes paying §114 DSR and §115 music creators up-front and at a profit in copyright bundles to pay for the music part of this equation.

I challenge all participants to honestly ask themselves, "After wireless, is there another format for music, or will it always be a form of streaming data dressed up as a new format?"

One important point to make is that *streaming corporations* like Youtube, Spotify and Pandora, not streaming technology itself, *are cannibalizing* download and CD *sales and profits*, in addition to the natural cannibalization of each new emerging music format.

Everyone loves streaming technology, just like we love record players or CD technology, it's the streaming corporations, current executives and phony business model that is the problem.

Consumers must pay for songs on a per-song basis like normal people.

Streaming corporations' unlawful, free and fraud-based "business models" are cannibalizing download and CD sales, not streaming itself. If streaming companies paid copyright owners, especially more than \$.00, we wouldn't have the cannibalization of American independent DSR profits. It's a false argument when you think about it since we spend all our time worrying about how a streaming service that gives it's product away for free, *without paying* for it, is cannibalizing a paying service that happens to be downloads at the moment, and the format before downloads, CD's which the numbers also show is being sharply cannibalized.

So this silly argument over *streams* cannibalizing *downloads* (and CD's) is really just about how free is cannibalizing paid. Try giving away "free food" and see if "paid food" is cannibalized. Clearly the "food subscription" model for Olive Garden's 30-day "Never Ending Pasta Pass" didn't work out at all for Olive Garden since customers who paid \$100 ate over \$800

dollars worth of food in this case⁸³ and more at \$1,600⁸⁴. So, did Olive Garden stiff suppliers?

Really, this whole idea of having a subscription model for music and then *not pay for the music really is ridiculous and a waste of time to even try and argue anymore.*

Don't pay for a Venti Latte at Starbucks⁸⁵ next time and see what happens.

Participants need to stop playing games with all §114 and §115 music creators and pay them what they want, just not whatever music licensees can get away with which is apparently a lot.

One song is worth almost \$4 dollars in 2014 prices based on a \$.99 single in 1960.

Imagine the music business before CD's and what if the CD manufacturers were bootlegging master recordings and giving away CD's for free by the millions since investors and advertisers were paying them for the cost of manufacturing those CD's, plus a huge profit. Do you think free CD's would have cannibalized the Vinyl industry quicker than it did? Of course it would, just like free streaming cannibalized paid CD's and paid downloads.

If you gave away free music on CD, CD use is going to rise. If you give away free streams, streaming use will rise.

Again, the question is, *what format is next?* To then say, "we don't know" may be true, yet it's still an excuse and a copout.

Sure, Star Wars style holograms of our favorite artists singing on our smartphones in 3-D may be just around the corner, or implanted music chips so when we think of a song it automatically streams into our brains, *but no matter the technology from here on out and the foreseeable future, music will always be in the form of digital stream, cloud locker download,*

⁸³ <http://www.cnn.com/id/102111586>

⁸⁴ <http://www.today.com/money/man-eats-100-olive-garden-meals-6-weeks-100-pasta-1D80266390>

⁸⁵ <http://fortune.com/2014/06/20/starbucks-raising-prices/>

exclusive app, or exclusive software i.e. for computer gaming, etc..

EIGHTH, Examining the animated gif file, Exhibits 2, Number 50 named “b9opp.gif”, as for CD sales, they dropped from a peak of **95.5%** of the market in 2003 to **30.4%** of the market in 2013, just 10 years, while all other digital services rose, including downloads which eventually helped cannibalized CD’s in addition to streaming services now helping cannibalize both CD’s and downloads - it’s a vicious cycle. The question then becomes “*if streaming is the future*” as all the streaming services claim, then is there any new format after streaming, or is streaming or some version of it always going to be it? In my opinion, a Copyright Cloud Locker that allows for streaming and/or downloading of playlists is the only business model that seem practical for the foreseeable future for consumers while paying all the copyright creators first for the use of their property, up-front.

NINTH, a growing number of articles^{86 87} on streaming in respected industry magazines⁸⁸ by seasoned reporters refer to streaming “cannibalizing” download and CD sales which the FIRST and SECOND answers in this section also help prove, combined make more of a case.

Recently, the ***biggest DSR recording artists in the world*** like Taylor Swift and Garth Brooks (see Quotes below) are now speaking out against Spotify, Youtube, and streaming in general.

Even if streaming was not cannibalizing download and CD sales at all, we can still argue that downloads and CD’s would still be cannibalized by the natural progression of new mediums coming into popularity with consumers - just like 8-track tapes, vinyl and cassette tapes were

⁸⁶ <http://www.businessspectator.com.au/news/2014/11/14/paths-advantage/free-digital-music-party-almost-over>

⁸⁷ <http://www.billboard.com/articles/business/6236365/album-sales-hit-a-new-low-2014>

⁸⁸ <http://www.billboard.com/biz/articles/news/retail/6281506/soundscans-third-quarter-numbers-in-one-word-bleak>

cannibalized by CD's.

The question still remains, if streams aren't affecting download and CD sales as streamers claim and, "If streaming is the future", as they say, then *there is no new format to cannibalize streaming*, according to streamers.

So, if streaming is it as the streamers claim, let's take them at their word and **there must be no future medium that will cannibalize streaming.**

TENTH, *Spotify helped cannibalize Sweden's entire music market to 70% streaming⁸⁹ which might be the future here in America*, especially if music is still given away for free to make advertising dollars and profits or as a loss leader to sell smartphones or subscription fees.

Piracy by illegal peer-to-peer music download and streaming sites also contributes to this profit loss as well as the incredible growth of mobile streaming and free downloads. Of course, the simple fact that at master .WAV file, an exact copy of the master digital sound recording can be emailed around the world in seconds and copied endlessly. While streamers gloat that nobody "can put the genie back in the bottle", they are simply wrong - we can stop the cannibalization of copyrighted music files in any format. There's new evidence⁹⁰ of Spotify's per stream rate peaking and now falling as they "scale". Spotify executives⁹¹ have said they will never raise rates for copyright creators which is irresponsible, unfair, and unlawful. Especially coming from a foreign corporation like Spotify telling American copyright creators that *Spotify is entitled* to their personal private property is ridiculous and *must be stopped* by the CRJ's immediately.

⁸⁹ <https://sg.news.yahoo.com/music-streaming-hits-70-market-pioneering-sweden-160032857.html>

⁹⁰ <http://thetrichordist.com/2014/11/17/breaking-spotify-per-stream-rates-drop-as-service-adds-more-users/>

⁹¹ <http://www.digitalmusicnews.com/permalink/2014/11/17/spotify-says-per-play-royalties-will-likely-never-go>

Again, to help stop piracy, the band U2 is working closely with Apple^{92 93} to **develop a protected music file**. Through ISP enforcement of copyrights, new encryption coupled with simple usernames and passwords, self corrupting music files, identifier codes, file tracking similar to Nielsen or Shazam style waveform fingerprinting, government enforcement of streaming companies, forcing Google and other search engines to stop profiting and promoting piracy, and even copyright enforcement by the Copyright Office itself would instantly help put the piracy genie back in the bottle. Stop going after college kids and soccer mom and go after individuals who are committing the piracy on a mass scale like Kim Dotcom.⁹⁴

If streaming companies get sold or go bankrupt tomorrow, the executives and upper management *have already made their money subsidized by songwriter, publishers, recording artists and DSR copyright creators*. See these additional excerpts and quotes on how streaming has cannibalized record sales and most importantly all music copyright creator's incomes and profits.

As most of the world knows, Taylor Swift pulled her entire catalog off of Spotify and other artists are pulling their albums down because *as they say, streaming is cannibalizing record sales*, starving songwriters, music publishers, independent recording artists and independent record labels.

⁹² <http://www.theguardian.com/music/2014/sep/19/u2-apple-collaborate-non-piratable-interactive-format-music-albums>

⁹³ <http://www.rollingstone.com/music/news/u2-and-apple-plot-new-interactive-digital-music-format-20140918>

⁹⁴ <http://thetrichordist.com/2014/10/06/a-tale-of-two-pirates-daniel-ek-utorrent-and-kim-dotcom-megaupload/>

TAYLOR SWIFT AND SCOTT BORCHETTA QUOTES

Taylor Swift is on the cover of the most current issue of Time magazine titled “The Power of Taylor Swift”. In one of the articles titled “Taylor Swift on 1989, Spotify, Her Next Tour and Female Role Models”, Swift once again explains her reasoning for leaving Spotify calling it and streaming in general, **“a grand experiment”**. Most recently, she pleaded for the industry **“to bond technology with integrity”**.⁹⁵ After 15 years, for all music creators, it’s an experiment that has failed miserably and only worked for streaming executives and the 3MLs.

Why did you leave Spotify? I’m in an office of people who are upset they can’t stream your music.

“Well, they can still listen to my music if they get it on iTunes. I’m always up for trying something. And I tried it and I didn’t like the way it felt. I think there should be an inherent value placed on art. I didn’t see that happening, perception-wise, when I put my music on Spotify. Everybody’s complaining about how music sales are shrinking, but nobody’s changing the way they’re doing things. They keep running towards streaming, which is, for the most part, what has been shrinking the numbers of paid album sales.”⁹⁶

In another article of this same issue of Time titled “Taylor Swift’s Spotify Paycheck Mystery”⁹⁷, Big Machine Label CEO Scott Borchetta went on.

“Swift and Borchetta both say that removing her music from Spotify is meant to make a larger point.”

“The facts show that the music industry was much better off before Spotify hit these shores,” Borchetta said. “Don’t forget this is for the most successful artist in music today. What about the rest of the artists out there struggling to make a career? Over the last year, what Spotify has paid is the equivalent of less than 50,000 albums sold.”

“The trampling of writers’ rights in the digital marketplace without any regard to their contribution to the creative process will no longer be tolerated.”

⁹⁵ <http://www.hollywoodreporter.com/news/billboard-women-music-2014-taylor-757076>

⁹⁶ <http://time.com/3578249/taylor-swift-interview/>

⁹⁷ <http://time.com/3581487/taylor-swift-spotify-borchetta/>

“During an interview with (Nikki) Sixx⁹⁸, Borchetta noted that Swift’s music will only be available on pay-to-stream services like Beats Music and Rhapsody.

“We determined that her fan base is so in on her, let's pull everything off of Spotify, and any other service that doesn't offer a premium service,” he said. “Now if you are a premium subscriber to Beats or Rdio or any of the other services that don't offer just a free-only, then you will find her catalogue.”

Borchetta believes other artists will follow in Swift’s footsteps.”

"It’s already happening. I've had calls from so many other managers and artists,” he said. “There's a big fist in the air about this. Spotify is a really good service, they just need to be a better partner and there is a lot of support for this.”

November 16, 2014’s NY Post reports, “It appears Swift’s co-writers on “Shake It Off,” Shellback and Max Martin, have gotten only a small check from the big hit when it comes to digital-streaming income. *“As a songwriter herself, she [Swift] feels bad about it,”* a source told On the Money.”⁹⁹

⁹⁸ <http://www.sixxsense.com/media/play/25540750/> November 7, 2014

⁹⁹ <http://nypost.com/2014/11/16/swifts-next-contract-is-the-talk-of-the-town/>

GARTH BROOKS QUOTES

“In a recent interview with *Access Hollywood*, Country singer Garth Brooks joined the chorus of those voicing their opposition to various digital music outlets and streaming services like iTunes and Spotify, saying that artists and songwriters are being hurt by not receiving fair compensation for their work.”¹⁰⁰

“I think a lot of people are going to start following. When music starts standing up for itself, it’s going to get a lot better,” Brooks remarked. “And there are some big friends of ours in music we need to stand up to, too,” adding, “if iTunes is going to tell you how to sell your stuff and it’s only going to go this way – don’t forget who created the music and who should be doing this stuff.”

“Brooks also made it clear that he’s no fan of YouTube, stating that the popular streaming service isn’t really paying the people who are creating the content.”

“And I’m telling you, the devil – nice people, but YouTube. Oh my gosh,” Garth replied. “They claim they pay people. They’re not paying anything either and people are getting millions and millions and millions of views and they don’t get squat. Trust me.” “Songwriters are hurting,” he continued. “I applaud Miss Taylor and I applaud everyone for standing up for the songwriters, because without them, music is nothing.”

“Brooks notably launched his own digital music service GhostTunes in September of this year, but in the interview he said it’s basically impossible to keep his music off sites like YouTube.”

“Yeah, you can do it. But you can’t get out of it. I had a sweet meeting with them. They were all fired up. They’re the sweetest... and they’re all like 12, they are the sweetest kids, so young” Brooks jokingly remarked. “I just got the first question: ‘How do you get out?’ Silence. You don’t. You don’t get out. Thanks to our wonderful, uh, somebody judging on this one, uh, the government. Yeah, it’s totally backward right now,” he continued. “If the artists will just keep hammering away, unify, stick together, then music will become the king again, which is what it should be. Music should always be first.”

¹⁰⁰ <http://countrymusicnation.com/garth-brooks-stands-songwriters-criticizes-youtube-53761#Y0UV4UDMEZgK0rC4.99>

ADDITIONAL QUOTES

Michael O'Neil, CEO of BMI

“Sites like Pandora and Spotify pay songwriters much lower royalties than radio. Do you think that will change?”

“I'm confident it will. Here's the situation: If you have a song that gets 1 million plays on traditional radio in a quarter—Taylor Swift or Adele might get that—you're talking \$500,000 in royalties for the writer and \$500,000 for the publisher. If your song gets 1 million plays on Pandora, you each get \$30. The difference is the size of the audience. A song played on traditional radio is heard by anyone tuning in at home or driving their car. If you hear a song on Pandora, you are listening to it alone.”¹⁰¹

Excerpts from New Yorker Magazine, “Revenue Streams”, November 24, 2014

“Pelle Lidell, an executive with Universal Music Publishing in Stockholm, told me that by 2008 “we were an inch away from being buried, and Spotify single-handedly turned that around.”

Ek was one of the pirate band. Before starting the company, he had briefly been the C.E.O. of uTorrent, which made money in part by monetizing pirated music and movies on BitTorrent, a major file-sharing protocol. Later, the Napster co-founder Sean Parker, for years Public Enemy No. 1 to record-company executives, joined forces with Ek. Who would have imagined, as one label head put it recently, that “your enemy could become your friend”?

For Swift, streaming is not much different from piracy. “Piracy, file sharing and streaming have shrunk the numbers of paid album sales drastically, and every artist has handled this blow differently,” she wrote.¹⁰²

Thomas Hesse, who led the negotiations for Sony, told me, “The main reason it took so long for Daniel to get all the majors on board was that he had this free tier, where all the music was on demand. Was that going to cannibalize the download world?” In the end, the free tier was limited to personal computers, so users would have to pay for subscriptions in order to listen on their mobile devices, a major incentive to convert to the paid tier. Nevertheless, Hesse continued, there was “a lot of discussion about how much Spotify needed to pay for the free streaming and how many paying subscribers it could potentially guarantee.”

After Universal made a licensing agreement with Spotify, Warner was virtually compelled to join the other major labels in negotiating. At the time, the company was also looking for a buyer.

¹⁰¹ http://www.crainsnewyork.com/article/20131201/MEDIA_ENTERTAINMENT/312019981/musicians-get-a-new-paymaster

¹⁰² <http://www.newyorker.com/magazine/2014/11/24/revenue-streams>

Parker told me that he tendered an offer to buy Warner with Ron Burkle, the Los Angeles-based venture capitalist. When another buyer, the Russian oligarch Len Blavatnik, expressed interest, Parker said that he told him, "Look, if you make Spotify contingent on the deal, I will withdraw my offer and you'll get the company." **In 2011, Blavatnik bought Warner, for \$3.3 billion. Parker became a Spotify board member and helped broker its partnership with Facebook.**

The exact terms of the licensing deals that Spotify made with the majors are not known; all parties signed nondisclosure agreements. In addition to sharing with other rights holders nearly seventy per cent of the money Spotify earns from subscriptions and ad sales—about the same revenue split that Apple provides on iTunes sales—the majors also got equity in Spotify, making them business partners; collectively, they own close to fifteen per cent of the company. Some analysts have questioned whether Spotify's business model is sustainable. The company pays out so much of its revenues in fees that it barely makes a profit. It operated at a loss before 2013. (The company maintains that its focus has been on growth and expansion.) The contracts are renegotiated every two or three years, so the better Spotify does, the more, in theory, the labels could ask for. This makes Spotify unlike many Internet companies, in which the fixed costs of doing business become relatively smaller with scale. For Spotify, scale doesn't diminish the licensing fees.

When Spotify began in the U.S., labels demanded up-front payments as the price of getting in the game. These payments were not always passed along to the content creators, even though it is their work that makes the catalogues valuable in the first place. Month by month, Spotify pays the major labels lump sums for the entire market share of their catalogues. How the labels decide to parcel these payments out to their artists isn't transparent, because, while Spotify gives detailed data to the labels, the labels ultimately decide how to share that information with their artists. The arrangement is similar on the publishing side. Artists and songwriters basically have to trust that labels and publishers will deal with them honestly, which history suggests is a sucker's bet. As one music-industry leader put it, "It's like you go to your bank, and the bank says, 'Here's your salary,' and you say, 'But what is my employer paying me? I work for them, not you!' And the bank says, 'We are not going to tell you, but this is what we think you should get paid.'"

Parker's tea had grown cold, and he poured some hot water into it. The October light dimmed in the high Plaza windows. He pondered the progress of the tide of humanity flowing up and down Fifth Avenue. For him, Spotify was a do-over—a second chance to get Napster right. And that felt "very vindicating."

"In Sweden, there was one tough year and then the debate changed," he said. "That will happen in the larger markets. The end goal is to increase the entire pool of music. Anything else is part of the transition." He added, "This is the single biggest shift since the beginning of recorded music, so it's not surprising that it takes time to educate artists about what this future means."

"And, if the artist can't afford to work, the music is going to suffer," Cash added, with feeling. "Spotify is not acting in its own self-interest by obliterating us."

Songwriter Lee Miller of NSAI

During a hearing in June 2014 on music licensing before the House Judiciary Subcommittee on Courts, Intellectual Property and the Internet, Rep. Judy Chu, D-Calif., queried songwriter witness **Lee Thomas Miller**, president of the Nashville Songwriters Association. "Let's assume the status quo prevails. What does the world look like in five years for songwriters?" Chu asked.

"We've lost 80 to 90 percent of [America's] songwriters over the last 12 years. Five years is a long time, so I don't know. I fear what that would mean. If we continue to move toward more of a streaming model it seems catastrophic. I hope Congress will take all of the facts into consideration and understand that an American profession is in a lot of trouble," Miller responded.¹⁰³

Except From The Tennessean, "Why Jason Aldean's album was pulled from Spotify", November 15, 2014

"You set a first-week streaming record with "Old Boots, New Dirt." Were you proud of that?"¹⁰⁴

"I asked the question five or six months out — we have to make the decision of whether we're going to window (Aldean and Dustin Lynch's new albums). Of course our digital employees about had a heart attack. Jason's management had already begun preliminary discussions with Spotify about what they would do and all of sudden here was Loba getting ready to throw a monkey wrench into it.

I almost didn't do it. I felt in my gut, in my heart, it was not a smart move. Looking at what (Big Machine Label Group President and CEO Scott Borchetta) had done in windowing, actually I very much agreed with him. But, I am not going to impose my gut instincts and opinions on everybody. I wanted to do some research. There were many discussions internally.

The capper was when (Broken Bow's distributor) Sony Red was here. I figured they would be gray as to whether we should or not. They very much believed we should not window because of the relationship and future business, so I relented. And then I regretted it every day because it just didn't feel right.

Everyone probably got tired of me talking about it. ... if I had to do it all over again I would have absolutely windowed. Subsequent to that, I had discussions with heads of North American music

¹⁰³ http://www.rollcall.com/news/taylor_swift_can_we_cant_songwriters_call_on_congress_to_take_action-237842-1.html?pos=oopih

¹⁰⁴ <http://www.tennessean.com/story/money/industries/music/2014/11/15/jason-aldeans-album-pulled-spotify/19065613/>

corporations who for some of them the company line is they don't want to window, but they personally said we should be doing it.”

Because it cannibalizes sales?

“If you look at ... if those are your most passionate music consumers, I have to believe a certain percentage of those 5 million (streams) — even if it's 2 percent — that brings you over 300,000 units sold. There is a reason why in the old days with record clubs, you couldn't get the brand new releases 12 for a penny. You had to wait for a time. Major motion pictures are not released directly to DVD, and in fact, after they've had their run in theaters, when they go to DVD, you can buy them for a period of time and then they go to the rental market.

There is a premium for brand new — cars, clothes, everything else. Why we devalue music, I don't know. I understand five years down the road, potentially, there will be enough subscriptions and enough that it balances out. In the meantime, over the next five years, how much revenue are we giving away?

There is absolutely a place for them in our industry and hopefully the growth in streaming will eventually offset the decline in digital sale. But, in the meantime, I strongly believe we *should* be windowing releases for a period of time.”

But, you are getting some revenue from Spotify for those streams.

“The argument is, if we don't window, we will damage our streaming relationships, to which I say, what, we'll have less free music out there we're not getting paid on? I don't care.

If I was an artist manager, maybe I'd feel a bit different because I'd want as much exposure as possible to help them sell tickets.”

Chrysler Blog on Pandora Radio formerly called “Savage Beast”

“In Greek mythology, Pandora was given a box that she was forbidden to open. *She disobeyed out of curiosity and released from it all the ills that beset man, leaving only hope within.*”¹⁰⁵

Artist Aloe Blacc Quote

“Earlier this month, days after Taylor Swift pulled her music from Spotify, (Aloe) Blacc wrote that “Wake me Up!” has been streamed more than 168 million times on Pandora yet his share of the domestic royalties was about \$4,000.”¹⁰⁶

¹⁰⁵ <http://blog.chryslerllc.com/blog.do?id=2285&p=entry>

¹⁰⁶ <http://money.cnn.com/2014/11/17/media/aloe-blacc-music-royalties/>

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CERTIFICATION OF SERVICE

I, George D. Johnson, an individual and digital sound recording copyright creator, hereby certify that a copy of the foregoing GEORGE D. JOHNSON'S WRITTEN DIRECT STATEMENT was served this 10th day of December by email on the following parties.

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